

**Bazon Center for Mental Health Law, Center on Budget and Policy Priorities
National Alliance to End Homelessness, National Fair Housing Alliance
National Housing Law Project, National Housing Trust
National Low Income Housing Coalition, Poverty & Race Research Action Council
c/o National Low Income Housing Coalition**

Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC

Cass Sunstein
Administrator
Office of Information and Regulatory Affairs
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Cecilia Muñoz
Director
Domestic Policy Council
The White House
Washington, DC 20500

May 14, 2012

Dear Secretary Donovan, Administrator Sunstein, and Director Muñoz:

On September 30, 2011, seven of the organizations listed below sent a letter to Secretary Donovan urging HUD to move swiftly on regulations important for low-income households and people and communities of color in order to ensure publication of final rules before the end of President Obama's first term. We continue to be concerned that important regulatory preparations undertaken over the previous years of the Administration may be lost if these regulations are further delayed.

We are joined by the National Fair Housing Alliance in writing again to emphasize our heightened concern because many of the priority rules we flagged continue to languish. The time available for issuing final regulations is rapidly running out. We urge HUD, OMB, and DPC to quickly work to resolve any outstanding issues that may exist with each of these regulatory priorities. Because of the urgency of expeditious action, we request the opportunity to meet with each of you during May.

The list below represents regulatory actions that, for the most part, are included in the Administration's most recent regulatory agenda but have not yet been proposed or finalized. Of the many items on HUD's regulatory agenda, we believe completion of those described below will be of the greatest longstanding benefit to the largest number of low income households.

REGULATIONS IN FINAL RULE STAGE

Fair Housing Disparate Impact Analysis

We understand that the final rule is pending at OMB and commend HUD for releasing the rule in a timely fashion. We would appreciate your support in pressing for completion of OMB review as soon as possible so that the disparate impact rule can be published soon. As you know, this rule is a priority for many reasons.

National Housing Trust Fund

HUD published proposed regulations in November 2010 to implement the NHTF. A final NHTF rule was drafted some time ago, but has not been sent to OMB because HUD has decided to tie the final NHTF rule to issuance of a final HOME rule, anticipated in September. It is imperative that a final NHTF rule be issued soon so that rental housing affordable to extremely low income people can be built, rehabilitated, and preserved as soon as funds become available. Therefore, if the final HOME rule appears to be lagging, we urge decoupling the NHTF final rule from the HOME rule.

Homelessness

The 2009 HEARTH Act improves the federal response to homelessness in many ways. Those improvements were on hold awaiting issuance of proposed Continuum of Care (CoC) regulations. According to the OMB Dashboard, the CoC regulations are at the interim final rule stage. Quick publication is essential so that FY 2012 CoC funds can be awarded through a NOFA.

PROPOSED REGULATIONS THAT SHOULD BE FINALIZED QUICKLY

Project-based Vouchers

The Project-based Voucher proposed rule will be in the *Federal Register* on May 15. We urge that it be swiftly finalized. The rule is necessary to comply with the statutory changes made by Congress in the Housing and Economic Recovery Act of 2008 and to improve the effectiveness of the program based on experience since the initial 2005 rule. Finalizing these long-delayed rule changes is particularly important in light of the major new reliance on PBVs to preserve properties previously funded by other HUD programs.

Voucher Portability

Proposed revisions to the Housing Choice Voucher portability rule are currently out for comment until May 29. After the close of the comment period, we stress the importance of speedy issuance of a final rule in order to reduce barriers to families seeking to move with voucher assistance to another jurisdiction and to reduce administrative burdens for PHAs.

Public Housing Capital Fund

A proposed Capital Fund rule was issued on February 7, 2011. At HUD's request, advocates met with HUD staff in August to offer further information about the proposed rule, including the need for greater resident involvement regarding the Physical Needs Assessment and 5-Year Capital Fund Action Plan. There is no apparent reason this rule could not be swiftly finalized.

REGULATIONS NEAR THE END OF THE HUD PIPELINE

PHA Voucher Program Consortia

It is our understanding that the consortia rule has made its way through departmental clearance and is awaiting PD&R regulatory impact analysis on its way to OMB. Each component of the Administration should work to ensure prompt issuance of a proposed rule and publication of a final regulation. The purpose of the consortia rule is to facilitate PHAs' combining administrative operations for some or all of their voucher programs. Most importantly, PHAs that administer Housing Choice Voucher programs should be allowed to form a consortium solely for the administration of the HCV program (regardless of whether they also administer public housing or other HUD programs). In addition, HUD should allow all PHAs in an HCV consortium to make single submissions of required documents and data to HUD and to receive a single ACC for HCV funding.

Public Housing Demolition and Disposition

In August 2009, Secretary Donovan wrote that public housing demolition and disposition applications need to be reviewed more closely, "through the lens of number, location, and affordability of units returning to the inventory," noting "a decrease in the number of long-term affordable housing units that has resulted in some cases." Advocates met with Assistant Secretary Henriquez in June 2011, at which time she indicated that PIH had made considerable progress in drafting revisions to Part 970. She also stated her support for many of the rule changes proposed by advocates, which is reflected in the issuance of Notice PIH 2012-7. A policy notice is helpful, but a regulation is necessary. It is our understanding that all departmental clearance comments have been resolved, and that HUD's OGC is finalizing a draft rule to send to OMB. We urge all parties to ensure speedy processing of a demolition/disposition rule so that a final rule can be in place this Fall. A regulation is critical to ensure the agreed upon goals of, among others: more meaningful resident consultation; more comprehensive and rigorous HUD review of complete applications; improved standards regarding project obsolescence; and strengthened plans for site reuse, replacement housing, and relocation.

REGULATIONS THE ADMINISTRATION HAS CLAIMED ARE HIGH PRIORITY

Affirmatively Furthering Fair Housing

HUD spent over two years vetting an AFFH rule with a wide array of stakeholders. Yet, a proposed rule is still pending at OMB, which has extended its review beyond the usual 90 days. Given HUD's careful groundwork, a proposed rule should be ready for comment and swiftly finalized. The rule would provide uniform data to HUD grantees. It would also provide standards for assessing grantees' AFFH performance in reducing segregation and poverty concentration, and in increasing families' access to opportunity. The rule would also provide enhanced guidance to grantees on preparing their fair housing analyses, along with improved procedures for accountability and enforcement.

Section 3

After working closely with HUD over the last three years on these revised rules, we were very disappointed to learn that the Section 3 regulations drafted by FHEO may not be moving toward the proposed rule stage until next year. At the beginning of the Administration HUD stated that it would place new and meaningful emphasis on recipients' Section 3 obligations, and HUD included economic development and job creation as key provisions in its 2010-2015 Strategic Goals. Much has been learned since the 1994 Section 3 rule changes. Implementing regulatory revisions now to establish clear objectives and to require compliance with Section 3 will help realize the HUD Strategic Goals and the Administration's economic recovery agenda.

SEMAP

The Section 8 Management Assessment Program (SEMAP) rule is the single most important regulation for the federal government's largest rental assistance program. It has been in effect for nearly 14 years without substantial revision. Generally, the SEMAP indicators should be revised to focus on results rather than on compliance with detailed HUD-prescribed procedures, and the scoring of the indicators should be adjusted so that compliance with legal requirements – which should be expected – yields a “standard performer” rating, reserving “high performer” status for PHAs that truly excel in their achievement of program goals. If it is not possible to complete the development of a proposed rule in the next several months — which we hope is not the case — we urge you to consider whether the Administration should proceed to propose and finalize changes in some elements of the rule. Of particular importance, rating on the “deconcentration” indicator should be required for all PHAs that administer vouchers in metropolitan areas, and the measure should be revised to focus on results, especially for families with children living in high opportunity areas.

OUR OTHER REGULATORY PRIORITIES STALLED AT HUD

Harassment

Courts have consistently recognized sexual harassment as a form of discrimination on the basis of sex under the Fair Housing Act, and HUD and DOJ have recognized the harms of racial harassment and other forms of harassment in both government-assisted and private housing. Yet HUD has yet to issue final regulations. Regulations will serve as both education and enforcement tools. They are particularly important now, when affordable housing resources are scarce and victims of sexual harassment do not have the option of choosing alternative housing.

Purchaser Qualifications

HUD should complete rulemaking on purchaser qualifications for multifamily housing, as initiated in 2005 pursuant to the mandate of Section 219 of the FY 2005 Appropriations Act. For program consistency, the rule should cover all purchasers, not just those for disposition sales. The rule should also include a review of any significant deficiencies in an entity's performance beyond the immediate locality of the subject property, and it should have screening criteria regarding an owner's involvement in overleveraged investments, fair housing violations, or violations of residents' rights to organize.

We encourage HUD, OMB, and DPC to follow through on the Administration's commitment to improve the housing programs serving the nation's lowest income households.

Thank you for considering this list of high-impact regulatory actions. We request separate meetings with each of you and your senior staff to discuss these priority proposals and what we can do to help speed publication of final rules. Please contact Ed Gramlich, NLIHC, 202 662 1530 x 314, to assist in scheduling a meeting.

Sincerely,

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cc: Dana Hyde, Michelle Enger, Shayna Strom