



May 18, 2017

VIA ELECTRONIC SUBMISSION

The Honorable Benjamin Carson
Secretary
U.S. Department of Housing and Urban Development
452 7th Street SW, Room 10276
Washington, DC 20410-0500

Dear Secretary Carson:

Pursuant to President Trump's interest in regulatory reform, we are writing to share our preliminary reform recommendations, which we believe could reduce current regulatory burden on owners, reduce burden on Housing and Urban Development (HUD) staff, and lower oversight costs.

LeadingAge is an association of more than 6,000 non-profit organizations who provide the full spectrum of long-term care and services to older adults. Our affordable housing provider members, many with faith-based origins, seek to serve the lowest income seniors in their respective communities in the most cost-effective manner possible.

LeadingAge's members have long experience running HUD-subsidized programs. Many also offer a range of enhanced or supportive services to help residents successfully age in community. Approximately 50% of providers operating the Section 202 program for seniors have budget-based or grant-funded Service Coordinators. About 40% of other non-Section 202 senior housing providers offer service coordination. And some are pioneers in collaborating or partnering with local services providers to enhance the range of services available.

Many of our members are modeling critically-needed blending of housing with services for our nation's seniors who lack financial resources and may expect to experience increasing supportive services needs as they age. The evidence is undeniable that housing plus services models lead to smarter spending, increased access to care, and better outcomes. To produce and operate federally-assisted affordable senior housing without service-enriched components would be counter to the growing understanding of the relationship between such services and the benefits to seniors and the public purse.

While regulations are important to ensure programs funded by taxpayers are accountable, efficient and well-run, increased regulatory burdens over the years have not included commensurate increases in payments to cover the additional costs of operations for such things

as training for and/or purchase of new online reporting software or systems, staffing to perform complicated and prescriptive new data collection and reporting, or the increased need to engage consultants to effectively evaluate and change policies and procedures at the site-specific level. This in turn requires providers to expend more time, energy and financial resources toward complying with regulations and away from pursuing innovative and cost-effective ways of serving their residents.

Due to two Executive Orders dealing with regulatory reform - [Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs](#), and [Presidential Executive Order on Enforcing the Regulatory Reform Agenda](#) - we recommend the following regulations for repeal, replacement or modification:

- Withdraw the mandate of providing utility cost benchmarking data for 100% of units as proposed October 4, 2016 under President Obama's 2013 Climate Action Plan. Since that time, President Trump has rescinded the Climate Action Plan in his Executive Order on Promoting Energy Independence and Economic Growth (March 28, 2017). While we have no objection to enabling owners to voluntarily provide such data, the proposed mandate places a significant burden on project operations in terms of training of staff or hiring of contractors, and could encumber or delay critical administrative processes such as contract renewals.
- Repeal the cumbersome policies of requiring annual remission of residual receipts, even as little as just \$1, above the current \$250 per unit. Current directives:
 - As authorized most recently by the *Consolidated Appropriations Act, 2017 (P.L. 115-31)* the call for submission of residuals receipts is made solely "upon request by the Secretary" and implemented "as determined by the Secretary" (*October 14, 2016 HUD Memorandum*). Yet our members believe that this establishes perverse incentives, threatens the stability of properties with unmet current or future capital needs, reduces capacity of owners to facilitate programming that accrues to the benefit of the residents, and requires time-consuming efforts for remission of any and all amounts, even as little as \$1 in excess of current thresholds set by the Secretary.

We recommend that such directives should be replaced with strong asset management practices to ensure first that capital needs now and in future will be met by adequate funding in reserve for replacement accounts and that, in senior housing particularly, programs designed for the benefit of residents (including provision of service coordination, collaboration with and/or provision of wellness programs) and other targeted services to facilitate successful aging in community should be prioritized as well.

- Streamline and reduce notification requirements under the Violence Against Women Act (VAWA). While we support the objectives and importance of having policies in place to ensure victims are not at risk of losing housing, and worked with stakeholder and victim advocacy groups in the crafting the original legislation in 2005 and subsequent

amendments in 2013, the current documentation and notification process requirements as implemented in 2015 are excessive:

- Current policies require provision of a substantial amount of paperwork. Owners/agents must provide the Notification of Occupancy Rights (8 pages) and the Certification forms (2 pages) to:
 - applicants when assistance is being denied or at the time the new household moves into the property
 - each household at the time of each annual recertification, and
 - each household at notice of termination

We encourage HUD to adopt a better, less voluminous or frequent, distribution plan. Suggestions on how to achieve this in the short term include providing the VAWA Notice to applicants at rejection, to current residents at notice of termination, and the VAWA Addendum at move-in. And, in the long term, incorporation of VAWA protections in the tenant rights and responsibilities brochure that HUD already produces and requires to be distributed to tenants at move-in and on an annual basis.

- Modify the frequency of Management and Occupancy Reviews (MORs) to reduce burden on owners and cost to HUD by performing site-based inspections only every 5 years for properties with the highest performance according to recent administrative and physical condition reports.
 - To ensure adequate oversight and best return on investment in a cost/benefit analysis, inspections should be scheduled in this fashion:
 - Within 12 months for new properties/contracts, “at risk” properties, properties with changes to ownership/management, properties with Real Estate Assessment Center (REAC) scores below 60 and properties with questionable finances.
 - Every three years for properties with satisfactory MOR scores, and REAC scores above 60.
 - Every five years for properties scoring above average or superior, with REAC scores above 70.
 - Further, inconsistency among contract administration and HUD reviews is a costly frustration to multi-state provider business practices. Therefore, contract agencies should be monitored if there is a reduction in overall score to ensure consistent, accurate and fair practice. This secondary monitoring ensures that HUD is not engaging agencies to conduct unnecessary reviews. Review processes should also be modified to provide a formal “dispute” process (via the existing Contract Administration Oversight Monitors) for owner/agents and mandatory edits to scores if “findings” are reversed to assist in reducing the number of reviews.
- Strengthen the consistency of policy interpretation by Contract Administrators and regional HUD staff. Beyond MOR issues as stated above, recommendations or directives from one contract administrator or local HUD office to a housing provider concerning the way in which they implement policies, submit information, provide justification, organize

files, etc. can be in conflict. The focus becomes preferential vs. mandated processes, and creates time-consuming variability in and adjustments to specific processes at the property and/or corporate operations level on behalf of particular sites.

- Update and replace all programmatic leases and ensure that owner/agents will be able to add addenda to all leases, approved by HUD, so that the leases can conform with state landlord tenant laws and other regulatory requirements. There have been many additions and mandatory addendums to the HUD leases in recent years. An overhaul and update would help to reduce errors and conflicts at the site level.
- Evaluate the costs and benefits of the Enterprise Income Verification (EIV) system, and eliminate it altogether if benefits do not clearly outweigh the costs.
 - *While awaiting results of an evaluation of EIV, at a minimum:*
 - Eliminate the EIV discrepancy report due to current ineffective and time-consuming processes and requirements.
 - Modify policies regarding use of EIV systems, enabling *all* properties receiving Federal rental assistance subsidies, including tax credit properties where tenants receive project-based assistance, to streamline income certification and documentation requirements by following the same protocols.
 - Replace the requirement for keeping printed paper copies of the multitude of EIV reports with a standardized practice of keeping electronic records.

Many MOR findings related to EIV focus more on process rather than outcome; such things as specific reports not being printed/kept on file as required, discrepancy reports not being resolved to the satisfaction of the reviewer, and income reports not being analyzed/followed up on properly are most frequent findings. However it does not appear that there been any effort to identify subsequent effect (if any) on rent calculations and rental assistance payments, once findings are fixed.

- Modify time-consuming and ineffective policies for HUD to approve project rent adjustments and Service Coordinator budgets, which can result in delays of four to 12 months before completion. It is unclear why submissions made in a timely manner by owners are not equally acted upon in a timely manner by HUD.
 - Renewal policies for Project Rental Assistance Contract (PRAC) programs have not been updated since the release of Notice H 2002-17, and current practice depends on references to Handbook 4350.1, Chapter 7, which on budget-based rent increases, a chapter which has not been updated since before the first PRAC properties were built, so it fails to take into account the unique nature of the PRAC program. Given recent shifts in staffing and organization of the field offices, perhaps more training and/or clearer guidance is needed. Many PRAC contracts have been held up this year due to Service Coordinator components within their budgets, yet communications from HUD offices and education to housing providers do not appear sufficient to help prevent or resolve the problem.

- For other FHA-insured and direct loan properties with Section 8, Handbook 4350.1 Chapter 7 also applies. However, in the case of submission of budgets by owners to project-based contract administrators (PBCAs), referrals often have to be made to the HUD staff in the field, particularly for increases of more than 5% for any line item. Since the start of the PBCA initiative, this appears to be contributing to the delays, though sometimes communication simply get bogged down.

One way to improve the process would be to raise current thresholds triggering 2nd tier (HUD field staff) review and approval of increases of more than 5% increases on a single line item to a new threshold of not less than 5% of overall project budget. Line item increase of more than 5% or \$500 would still require an explanation, but should be able to be handled by well-trained account executives handling site-level reviews, whether for PRAC or Section 8. And PBCAs should be allowed to process line-item requests over 5%, so long as the total budget increase request is less than 5%.

- Repeal costly limited English proficiency (LEP) mandates imposed on individual providers and replace with centralized provision of translation of documents and contracted interpretation services through HUD:
 - Executive Order No. 13166 was issued in 2000. Implementation guidance, issued in 2003, made housing owners/agents responsible to independently translate, in potentially several languages (depending on facility location, resources and population mix), “core documents” including the lease, lease attachments, fair housing statements, facility application, and house rules as well as any termination/eviction notices and other legally required documents or policies. In addition, the notice stated that interpreter assistance would need to be provided free of charge for those who could not read in their native language and/or to facilitate understanding of other documents not translated in writing, as indicated by the self-assessment. Housing providers would also be held accountable for the completeness and accuracy of all translated documents or interpreter services provided. And efforts were expected to expand over time as more documents or translations in additional languages could be paid for.
 - HUD’s office of Fair Housing has taken the lead in providing some notification letters and documents in certain languages. But where providers identify a prevalence of persons speaking other languages, they must translate these core documents at their own expense. Owners continue to be responsible for meeting all oral interpretation obligations.
 - Despite prioritizing the range of documents and the number of languages in which assistance is provided, not all persons with limited English proficiency are being equally served in their native tongues due to budget constraints at the site level.

HUD could help increase meaningful access to programs and services by persons with limited English proficiency and reduce financial and administrative burden on housing providers by expanding the range of core documents and number of languages in which they are provided. And by arranging for a national or regional call-in centers where all owners and/or residents might obtain 3rd party oral translation services. We encourage

HUD to convene stakeholder working groups to discuss current LEP efforts and prioritize ways to rebalance obligations.

- Modify regulations to make capital improvements in properties easier. This could be accomplished by raising the threshold for seeking HUD approval before using project reserve for replacement funds. Removing the requirement for approval by HUD for the use of site level reserves for amounts not greater than \$100,000 in a year would significantly reduce burdens on owners and HUD, who share an interest in maintaining these properties.
- Continue to reduce the regulatory burdens and systemic inefficiencies of having a multitude of rental assistance programs by standardizing and consolidating the following processes from a tactical level, including income determination and verification, property inspections, compliance audits, submission of data to the federal government – specifically electronic file formats, errors, forms, etc.
 - Some of this was begun with the issuance of Notice 16-09 on streamlining (October 3, 2016).
 - Reforms authorized under the Housing Opportunity Through Modernization Act (HOTMA) are highly desirable and should be prioritized for implementation as soon as possible.
 - Expand on past demonstrations for uniform use of the HUD REAC physical inspection protocol, reduction of duplication of effort in reporting of annual financial statements, and the full implementation of a cross-departmental Comprehensive Needs Assessment e-tool.
- Withdraw the new flood plain rule to alleviate the chilling impacts on financing or refinancing of mortgage insured properties. If new flood plain rules are implemented as stated, new construction and refinancing efforts for properties currently in the pipeline would be derailed.
- Repeal the succession of interpretative changes regarding Option 4 properties in the Section 8 renewal guidance, including the requirement to submit rent comparability studies as part of budget-based rent adjustments, and replace with original language supporting original Congressional intent exempting them from comparability (while retaining the clarifications regarding 20 year contracts).

This is not an exhaustive list. We would be happy to provide further details and welcome the opportunity to be part of further discussions. However, we caution that regulatory relief is not a substitute for needed funding. While it is expected that several of these proposals may result in cost savings to HUD in the area of administrative oversight, these recommendations do not represent significant cost savings to operators that already struggle with unmet capital needs. Any reforms pursued should not be used as a justification for reducing funding for existing programs or contracts. In fact, funding constraints have increasingly drained financial reserves, denied adequate efforts at capitalization and rehabilitation and impeded the innovative work of

seeking to reduce overall Federal spending for healthcare through the pursuit of external resources at the sites which might otherwise be used to enhance services or address property rehabilitation needs.

We look forward to working with you to make the Department's regulations more effective and less burdensome in achieving HUD's mission to create strong, sustainable, inclusive communities, and quality affordable homes for all. And we urge you as well to help our members as they seek to maintain stable, affordable housing for seniors currently served by HUD programs by seeking to adequately fund the renewal of Section 202 PRACs, Section 8 Project- and Tenant-Based Rental Assistance, and the Service Coordination programs in Multifamily and Public Housing.

Thank you for your consideration of our request. We look forward to engaging in further discussions on this important matter. If you have any questions, please feel free to contact me at (202) 508-9483 or cbloom@leadingage.org.

Sincerely,

Colleen Bloom
Director, Housing Operations

CC:

Janet Golrick, Acting Deputy Secretary
Sheila Greenwood, Chief of Staff
Ariel Pereira, Associate General Counsel for Legislation and Regulations
Robert Bowes, Senior Advisor Housing
Stephanie Holderfield, Special Advisor PIH
Alexander Coffey, Special Advisor PIH
Bob Iber, Acting DAS, Office of Multifamily Housing