



Public Housing Authorities Directors Association

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*“The fee for service model is one of the pillars of the Public Housing program’s conversion to asset management. The OIG’s recommendations would undermine this **massive accomplishment**... and turn back the clock on asset management and do just the opposite of what is practiced not just throughout the housing industry, but throughout the federal government when it comes to fee for service [programs].”*

Source: *Three HUD-PIH officials*. Page 23, Comments 1 & 2 of the HUD response to the Inspector General's Report number 14 # 2014-LA-004 .

March 16, 2016

Honorable Julian Castro
Secretary
U.S. Department of Housing
& Urban Development
451 7th Street SW
Washington DC 20410

Dear Mr. Secretary:

PHADA’s members are deeply dismayed that HUD plans to reverse its position (see HUD quotes above) and completely abandon a major longstanding policy on asset management - **which was the Department’s own proposal from the outset**. This action, prompted by a flawed HUD Inspector General (IG) report, follows another recent HUD decision retreating from its solid response to the IG on the policy of higher income families in public housing. Frankly, these kinds of damaging policy shifts raise serious questions about whether housing agencies can trust the Department to maintain consistency on any number of important matters.

The history surrounding asset management dates back more than a decade when the **Department insisted that PHAs transition to the system as part of negotiated rule on a new Operating Fund formula**. The rule was first instituted in 2007 with a goal of focusing greater attention on the performance of each public housing property. By shifting funding, budgeting, accounting, and management to the property level, HUD said this monumental change would simultaneously improve transparency and performance in public housing, while providing PHAs with incentives to increase their efficiency through the creation of a fee-for-service model and central office cost centers (COCCs).

Through a long and laborious negotiated rulemaking process mandated by Congress, HUD leadership was the asset management program's strongest proponent, arguing that PHAs should operate like other multifamily housing providers. Under asset management, the Department required PHAs to undergo costly reorganizations that decentralized their operations. This allowed public housing properties to earn and retain "de-federalized" fees resulting from cost efficiencies. It took months - even years for some HAs - to transition amid significant restructuring, reductions in force, and other cost cuts. Still, most PHAs that were required to do so, successfully implemented the system.

The IG issued a misleading report on asset management on June 30, 2014. Among other shortcomings, that report only examined a handful of poorly run housing agencies, extrapolating results to the entire public housing program. PIH officials noted the many flaws in their response to the IG, adding that the transition "took immense time and resources to accomplish and was attained in a completely transparent manner." Indeed, this is one of several reasons PHADA so vigorously opposes HUD's intention to yield to the IG. Many PHAs literally spent years trying to ensure compliance with the system. Now, after abandoning its own well-reasoned rebuttal, HUD is apparently preparing to tell PHAs, *"Never mind all the time, costs and effort of converting thousands of properties to asset management. Go back to the way you were previously running your agency"?!*

PHADA is very troubled the Department is so submissive in this instance and would reverse course given that HUD itself called the transition a "massive accomplishment," adding that the IG's recommendations are **"not implementable in absence of a sharp reversal of many of the core achievements of the conversion to asset management."** [Emphasis added]. In short, the Department's plan to "refederalize" COCC funds will largely undo asset management altogether (see below).

In conjunction with our industry partners (NAHRO, CLPHA), PHADA issued a thorough response to the IG in the summer of 2014. To date, neither your office nor the IG has responded to that correspondence, another copy of which is enclosed. Rather, PIH's Principal Deputy Assistant Secretary Lourdes Castro Ramirez informed the industry groups in separate March 7 telephone calls that HUD would refederalize fees in the central office cost center, effectively ending a core element of the program. The HUD IG testified later the same week before the Senate T-HUD Appropriations Subcommittee, stating that *"HUD and OIG have reached an agreement to implement the recommendations as stated in our audit report. HUD has agreed to federalize the fees and will be reevaluating the fee amounts. HUD will need to go through the rulemaking process to fully implement the changes...."*

The arbitrary nature of this decision and the lack of advance consultation is disturbing, especially given the detailed history cited above. We ask that you reconsider the Department's ill-advised reversal, pending a meeting and fuller discussion with the industry, which we have requested in concert with NAHRO and CLPHA.

In addition to the points above, we believe the Department should reconsider for other reasons:

- HUD itself acknowledged the IG report is methodologically unsound and fails to recognize real estate practices and principles well established in other federally-assisted housing programs. “There is no basis for treating a PHA differently... and if [HUD] did... it would result in “illogical and unjustifiable complications and delineations across its affordable housing programs,” wrote HUD-PIH. We further agree with PIH that, “Property owners who administer federally funded affordable housing programs should be held to the same high standards around operating efficiency and effectiveness, **regardless of their organizational or ownership structure.**” [Emphasis added]
- Even if made prospectively, the changes could create an accounting nightmare for PHAs, their finance staffs, fee accountants, and auditors. All will now have to sort through their COCCs attempting to determine the origin of funding sources. HUD’s back-peddling might very well force HAs to revert to cost allocation systems, which ironically, the Department said were so inefficient to begin with. In fact, if HUD is to refederalize COCC funds, it seems to us that this will need to be tracked by program within the COCC (in other words how much of the COCC refederalized funds belong to Public Housing, how much to CFP, how much to HCV, etc.). This will almost surely require the reinstatement of a cost allocation system, at least for COCC expenses to be allocated to the revenue source to determine how much refederalized funds are left by program type after paying related expenses. For that matter, will HUD now require PHAs to reorganize AGAIN and possibly re-centralize their operations as part of a new rule? Adding insult to injury, all this would have to be done at a time of historically low funding when many agency staff and resources have been cut to the bone. In fact, HUD and Congress have only adequately funded the operating account twice during the Obama presidency (2009–17).
- This shift would ignore HUD’s own point that defederalization is “consistent with OMB guidance” and other federal government fee for service accounting practices. It would also eliminate financial incentives and flexibility for HAs since, as HUD-PIH stated, “any fee amounts in excess of their actual costs would be subject to the same restrictions that they are now.” Simply put, HUD should not abandon this established model. Rather, the Department should adhere to its stated approach in response to the IG: “If fees are reasonable, i.e., that is what the government would otherwise spend in the marketplace for that service or activity, there is no need for the government to regulate how those funds are spent.”
- This change would further strain relations between HUD headquarters and agencies in the field. PHAs would be left to ask, **if the Department reneges on a policy which it has previously promoted and even required, what regulation might be next?** Indeed, some members have reported to PHADA they will not participate in the Rental Assistance Demonstration because they feel they cannot rely on HUD’s fidelity

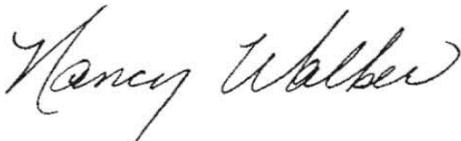
to the RAD process. Related to this point, current RAD rules provide that any net cash flow and/or disposition proceeds (e.g. when the property is sold to a Limited Partnership for LIHTC) are also considered defederalized funds. This is an enticement to transition to RAD. Will there be an attempt to take this away at some point?

- HUD said that returning to the prior system “would negate many of the achievements of public housing...and imperils the Department’s ability to implement RAD, one of its key objectives.” HUD should carefully consider this point. One major reason for the transition to asset management was the fact that banks, investors and other private sector financiers required this type of organizational and accounting structure. HUD should also consider the fact that defederalized fees in many cases are the only source of money PHAs have available to initiate development of affordable housing in their communities. Refederalization will ultimately inhibit the construction of new units that many agencies have undertaken with current flexibility.
- HUD and the IG are contradicting themselves in other ways. For example, we are aware of IG audits where they have instructed the PHA to pay back findings out of COCC “non-federal” funds. How can HUD and the IG suddenly determine those funds are now “federal” after years of deeming otherwise?
- Congress required HUD, by statute, to negotiate the Operating Fund regulation and asset management components. Does HUD possess the legal authority to make such major changes without going back to Congress first?

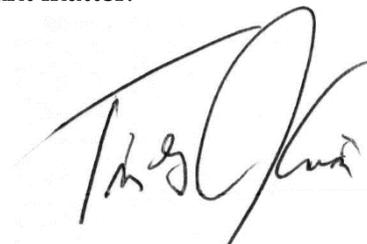
In sum, many PHAs labored for years at the behest of HUD to implement entirely new asset management policies and procedures in a very difficult and tumultuous transition. With just a brief phone call from HUD officials, however, we are now told all those changes may have been for naught.

We strongly believe the Department should not refederalize COCC funds and reverse a policy that it advocated and insisted upon more than a decade ago. We look forward to further conversations with your staff on this important matter.

Sincerely,



Nancy Walker
President



Timothy G. Kaiser
Executive Director

Cc: Honorable Lourdes Castro Ramirez
Members of the U.S. House of Representatives
Members of the U.S. Senate
Jemine Bryon
Milan Ozdinec
Gregory Byrne
Donald J. LaVoy

Enclosure