



National Association of Housing and Redevelopment Officials

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VIA ELECTRONIC MAIL

June 27, 2011

Colette Pollard, Departmental Reports Management Officer, QDAM
U.S. Department of Housing and Urban Development
451 7th Street, SW., Room 4160
Washington, DC 20410-5000

Re: Notice of Proposed Information for Public Comment; Public Housing Authority
Executive Compensation Information (Docket No. FR-5487-N-13)

Dear Ms. Pollard:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I am writing to submit comments in response to the Department's April 26, 2011 notice regarding a proposed information collection related to Public Housing Authority executive compensation. NAHRO represents more than 3,100 agencies and over 20,000 individual members and associates. Collectively, our membership manages over 970,000 public housing units, or approximately 83 percent of the entire inventory. Not surprisingly, our membership has serious concerns regarding the Department's proposal.

NAHRO wishes to make it clear that we share the administration's commitment to transparency and accountability, and we recognize and respect HUD's oversight responsibilities. Unfortunately, as it relates to this matter, the Department has overreached, and, making matters worse, senior HUD officials have rendered the public comment process irrelevant by prematurely and irresponsibly announcing that the outcome of the process has already been determined. In her recent testimony before the House Appropriations Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Assistant Secretary for Public and Indian Housing Sandra Henriquez portrayed HUD's plans regarding PHA executive compensation as a virtual certainty and practically guaranteed that the Department will receive Office of Management and Budget approval to require every PHA in the country to report to HUD the compensation packages of their top five paid personnel. Furthermore, before HUD has even had a chance to review public comments, the Assistant Secretary has already informed Congress that the Department will unilaterally amend the Annual Contributions Contract with all PHAs to require this reporting, and that HUD will begin posting this information on its website.

Akinola Popoola, PHM, President; **Betsey Martens**, Senior Vice President; **David Allen Brown**, PHM, SHM, Vice President-Member Services; **Larry Hopkins**, Vice President-Community Revitalization & Development; **Clifton C. Martin**, CMPO, SPHM, PHM, Vice President-Professional Development; **Elizabeth C. Morris**, Vice President-International; **Dianne Quast**, PHM, Vice President-Housing; **J. William Quirk**, Vice President-Commissioners; **Saul N. Ramirez, Jr.**, Chief Executive Officer

We regret that HUD has essentially signaled to interested parties that their comments will not be given serious consideration. Despite the disregard for public input that HUD has demonstrated, NAHRO must nonetheless go on the record in opposition to the Department's proposal, which we believe to be unnecessary, burdensome, and likely rooted in a purely political motive.

Through the notice, the Department appears to offer three justifications for the information collection. First, HUD references existing law requiring nonprofit organizations receiving Federal tax exemptions to report to the Internal Revenue Service annually the names and compensation of their five current highest compensated employees and implies that PHAs should be subjected to the same requirements since they "receive significant direct Federal funds." Second, the Department argues that the information collection will promote "public transparency." Third, the Department asserts that the information collection will "enhance oversight by HUD and by state and local authorities." With these claims in mind, NAHRO notes that the April notice solicits comments from "members of the public and affected agencies concerning the proposed collection of information to...evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility."

The proposed information collection would single out PHAs and subject them to a level of scrutiny not shared by the many other agency types that receive "significant direct Federal funds" through the Department.

A number of federal housing and community development programs draw clear distinctions between PHAs and private nonprofit entities, and most PHAs are not organized as nonprofit organizations under the Internal Revenue Code. PHAs are not creations of federal government. As state-chartered organizations, PHAs should not be subjected to overreaching federal intrusion with respect to internal matters. As such, the justification that collection is appropriate because the IRS requires certain nonprofit entities to submit this information is irrelevant. Furthermore, it should be noted that many PHAs have nonprofit affiliates or instrumentalities which are already subject to IRS reporting requirements. PHAs' affiliates or instrumentalities that "receive significant direct Federal funds" are therefore already held to a standard consistent with that which is applied by HUD to other non-profits, rendering the proposed information collection duplicative for such entities.

It is also important to note that HUD, in its interpretation of various statutes, has maintained a distinction between PHAs and private nonprofit organizations for purposes of program eligibility. HUD's past insistence that PHAs should be treated differently than private nonprofits stands in stark contrast to its current reasoning that PHAs should be subjected to the same (or more stringent) reporting requirements simply because another unit of the federal government requires them of nonprofits.

As HUD does not compel the reporting and publication of this information from any other of its public or governmental grantees and has not indicated that it will do so, there can be no doubt the Department is singling out PHAs. NAHRO strongly believes that PHAs should not be subject to more stringent regulation than any of the other organizations, agencies, and contractors that

receive federal subsidy as a result of their participation in HUD-administered programs. We also note that, even among nonprofit entities that “receive significant direct Federal funds...” the Department does not now and does not propose to post the compensation of their top five executives on its website.

NAHRO notes that certain recipients of federal funding are subject to the requirements of the Federal Funding Accountability and Transparency Act, commonly known as simply the Transparency Act, which was signed into law in September 2006. The Transparency Act requires information disclosure concerning entities receiving Federal financial assistance such as Federal contracts, sub-contracts, grants, and sub-grants. Under the Transparency Act, entities which in the previous fiscal year received 80 percent or more of their annual gross revenues through federal funding, with federal subsidy totaling \$25 million or more, must disclose the names and total compensation of their five most highly compensated officers. Beginning with FY 2011, those recipients of HUD funding, including PHAs, that meet these criteria will be required to meet an appropriate standard of transparency as established by the Congress. For other agencies that do not exceed these thresholds, an information collection like the one proposed by HUD would seem to go beyond what was intended by the Congress when it considered this issue less than five years ago.

Given the organizational and governance structures of PHAs, the proposed information collection would do little to promote transparency around the use of federal subsidy.

Creating a database of salary and benefit information divorces the data from its context and creates the false pretext of comparability between PHAs of different sizes and geographies. Without providing information regarding the job markets in which PHAs are located, the responsibilities included in each position, the seniority and experience level of the employee, the total budgets each PHA (or its Affiliate/Instrumentality) manages (including Public Housing, Voucher programs, Project-Based Section 8 Multi-family Housing Assistance, Low-Income Housing Tax Credits, Section 202, Shelter-Plus Care, State and Locally-funded housing and homeless programs, other unrestricted general funds) etc., this database would be ripe for exploitation and misinterpretation, thus running entirely counter to HUD’s justification of transparency and accountability.

In many instances, at small and sometimes small to medium-sized PHAs, one or more of the five highest-compensated employees (if there are at least five employees) work part-time. The database proposed by HUD would obfuscate the dramatic differences between individual PHAs, some of which are small operations managing homogenous portfolios, and some of which are large, multifaceted real estate operations which manage a range of programs and serve the needs of many sectors of their communities. Given such variation in PHA characteristics, it is to be expected that compensation for employees varies commensurately.

Unfortunately, the suggested framework of the database makes the implicit assertion that PHA executive salaries and compensation can be compared with one another, even without contextual information. NAHRO would argue that a more intellectually honest comparison would seek to compare PHA salaries and compensation with those of other local government employees, similarly sized real estate operations, or other such comparable entities. The failure of the

administration's proposal not only to provide or even contemplate such relevant comparisons, but even to provide a minimum safeguard against misinterpretation of the data collected, calls into question the true purpose of the proposal.

It is also important to point out that many PHA executives' salaries and benefits are paid only in part from federal subsidy. As noted, many PHAs maintain a diverse portfolio of properties and business activities. These activities generate revenue which is used to supplement federal subsidy, including for purposes of paying PHA employee salaries and benefits. However, given that these other revenue streams are not federal funds, increased reporting requirements that fail to distinguish between various funding streams will do little to advance HUD's stated goal of increasing transparency around the use of taxpayer dollars. Imposing such requirements could instead have a chilling effect on PHAs' entrepreneurial activities while making it harder for local agencies to retain experienced, qualified executives with the skills needed to act as responsible stewards of federal and nonfederal resources.

Because PHAs are typically state-chartered entities accountable to local boards, the decision to make employee compensation data publicly available should be made, accordingly, at the state or local level. Many states have already deliberated on this issue, implementing a range of requirements under state structures such as Freedom of Information Acts, Open Records laws, etc. The existence of these local requirements renders the proposed federal requirements not only duplicative, but also unnecessary and intrusive.

The proposed information collection will do nothing to enhance oversight by HUD since the federal government is not empowered to set PHA executive compensation.

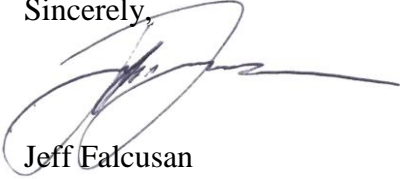
This information collection is not germane to the operation or implementation of HUD's programs. HUD does not have the authority to set standards for PHA executive compensation, making this collection superfluous. For this reason, and for the reasons described above, it is abundantly clear that the proposed collection is *not* necessary for the proper performance of the functions of either HUD or local agencies and will have no practical utility. The information collection should not be implemented as proposed.

HUD should not impose burdens on its partners that it is not willing to impose upon itself.

Finally, while NAHRO stands in opposition to this particular proposed information collection, we agree that the administration has a responsibility, as expressed by Assistant Secretary Henriquez during her recent testimony, "to ensure good stewardship of taxpayer dollars and promote transparency in government." Given the sentiment expressed by the Assistant Secretary, many NAHRO members have communicated to us their disappointment that the Department is poised to subject PHA employees to an unreasonable degree of public scrutiny while highly compensated HUD officials and career employees, all of whom receive 100 percent of their salaries through taxpayer dollars, have not been asked to sacrifice similarly any measure of their own privacy in the name of transparency and accountability. To that end, NAHRO has, under separate cover, submitted a Freedom of Information Act request for the names, titles, and compensation packages of the top five paid personnel in every HUD field office, as well as the names, titles, and compensation packages of every HUD employee (including political

appointees) whose annual compensation (exclusive of benefits) exceeds \$100,000. Once NAHRO receives the requested information, we will make it publicly available through a dedicated website.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Jeff Falcusan', with a long horizontal flourish extending to the right.

Jeff Falcusan
Director of Policy and Program Development