



Public Housing Authorities Directors Association

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

RE: Notice of Revised Information Collection for Public Comment; Public Housing
Authority Executive Compensation Information
Docket No. FR-5690-N-02
OMB Control Number 2577-0272

March 26, 2013

Dear Ms. Pollard:

On January 25, 2013, the Department of Housing and Urban Development published a, "Notice of Revised Information Collection for Public Comment; Public Housing Authority Executive Compensation Information," Docket No. FR-5690-N-02. The notice solicited comments concerning 4 issues. The Public Housing Authorities Executive Directors Association, a membership association representing approximately 1,900 housing authority chief executive officers, submits the following comments.

At the outset PHADA wishes to reiterate its fundamental objection to salary limitations imposed or proposed by the department or by Congress. Information available through prior year information collections or from other sources independent of HUD indicate that the vast majority of HA executive salaries are reasonable. The small proportion of salaries that may appear excessive can be identified and dealt with through standard monitoring and oversight practices available to the department, to state monitoring institutions, to local governing bodies and to local HA boards.

1. Are the revisions necessary for the proper performance of the functions of the agency, including whether the information will have practical utility?

In commenting on the original information collection notice, PHADA objected to the collection as redundant and duplicative. We continue to object to HUD's collection of this information. The department's responsibility for oversight and monitoring will retain availability of this information to the department, but collecting details concerning compensation of over 20,000 employees from at over 4,000 public and non-profit institutions has done little but create additional administrative responsibilities for HUD and for those responding to this collection. To date, PHADA is unaware of any practical utility of this information.

Changes proposed to the form are as problematic as the collection in general. While the form claims to eliminate certain elements of the collection required in 2012, such reductions are far from completely clear, as discussed below in connection with information collection by the Internal Revenue Service. Other changes appear to increase the burden on respondents, requiring agencies to identify elements of compensation paid from various federal and non-federal accounts. As discussed below in connection with HAs' implementation of asset management under the department's requirements, identification of funds in this manner may be difficult.

2. Is the agency's estimate of the burden of the proposed collection of information accurate?

PHADA does not believe that HUD's estimate of the burden of this collection is accurate. The department estimates that agencies will require 20 minutes to complete the report. Although that estimate may accurately reflect the time agencies will spend filling out the Excel workbook that HUD has prepared, agencies also face the task of identifying compensation paid from Section 8 funds, Section 9 funds, and non-federal funds accurately and under the threat of civil and criminal liability for making false claims and statements. For agencies managing a complex inventory of assisted housing funded by several different programs which compensate executives through a central office cost center, identifying resources used for compensation with sufficient accuracy to avoid civil or criminal liability may take a great deal more time than 20 minutes. Finally, since the revised collection will be required for compensation in 2012, agencies will have to retroactively untangle resources used to compensate executives without the opportunity to create tracking tools that would facilitate such reporting. PHADA believes that the burden for completing this collection will amount to double or triple HUD's national estimate and may take hours to complete at specific agencies.

3. Can the quality, utility, and clarity of the information to be collected be improved?

The quality and clarity of the information to be collected may be improved substantially if the department makes clear in its instructions what exactly it wishes agencies to report. First, the form will collect compensation information for "executives," rather than "employees," as was collected in 2012. HUD's guidance concerning who is an executive makes clear that the term does not include employees such as highly skilled non-supervisory tradespeople or clerical staff. It is also clear that the requirement includes senior executive and management staff. However, it is not clear whether or not HAs must report the compensation of mid-level supervisors. Prudent agencies will likely report on the compensation of employees HUD may not consider "executives," unnecessarily burdening the agencies and the department.

A second definitional issue arises with another change the department has proposed. In 2012, HUD demanded information concerning "Reportable Compensation from the PHA and Related Organizations," "Contributions to Employee Benefit Plans & Deferred Compensation From the PHA and Related Organizations," and "Other Compensation or Allowances." The revised form requires reporting of "Cash Compensation," with instructions to follow IRS guidance concerning compensation in its publication, "2011: Instructions for Form 990 Return of Organization Exempt From Income Tax."

Unfortunately, that publication never defines the term, “Cash Compensation.” HUD’s instructions refer to a table in the IRS publication where “Base salary/wages/fees paid,” is used. HUD’s instructions go on to advise agencies that the IRS table may be helpful in, “identifying types of compensation to include in the definition of base salary and definition of bonus and incentive compensation.” In addition to base salary/wages/fees paid, the IRS’s table lists 70 other forms of compensation reportable on Form IRS 990 Schedule J. Many of those forms of compensation appear to coincide with compensation the department has claimed it is no longer collecting (e.g. Contributions to Employee Benefit Plans and Deferred Compensation from the PHA and Related Organizations, Other Compensation and Allowances).

A final matter that increases burdens and puts quality, clarity and utility at risk is the requirement to distinguish between executive compensation paid from Section 8 funds (presumably this will include funds from the tenant based program and funds from Project Based Rental Assistance and Project Based Housing Choice Voucher properties agencies may own or manage), and Section 9 funds. Complications of this reporting for agencies implementing asset management are discussed below, but this requirement adds to the complexity of record keeping and reporting, particularly retrospectively as will be required in 2013 for calendar year 2012.

In sum, the lack of clear definitions for “executives,” “cash compensation,” “base salary,” and “bonus and incentive compensation,” may detract from the quality of information collected, the clarity of information the department publishes, and the utility of that information to HUD, to HAs and to the public. The additional burden of reporting on compensation paid from Section 8 funds, Section 9 funds and non-federal funds places the quality of reported information at additional risk. HUD may receive compensation information that is unintentionally inaccurate and which may not be comparable among agencies.

4. Can the burden of the collection of information on those who are to respond be minimized?

HUD may take several different approaches to carrying out its monitoring and oversight responsibilities and not require annual submission of compensation information concerning over 20,000 local agency employees. First, it may take a risk based approach to assessing compensation based on various tools the department already has available, and gather compensation information from agencies that appear to be at higher risk for overcompensating executives. Second, the department could rely on annual IPA audits of agencies to evaluate compliance with statutory limits on the use of federal resources for executive compensation, and compliance with guidance concerning the best practice of conducting salary comparability surveys. Third, HUD could require agencies to certify that 1) they are in compliance with statutory limitations on the use of federal funds to compensate executives, and 2) that they conduct periodic compensation surveys to make sure compensation is comparable to other similarly situated executives. Fourth, the department could rely on existing surveys of HA executive compensation that respect the anonymity of respondents. Such surveys would provide HUD with the kind of information it published in its, “PHA Compensation Fact Sheet.” PHADA publishes an annual survey of executive director compensation which the department may purchase at a reasonable price. While the proposed revisions to form HUD 52725 may eliminate

some reporting burdens, they add additional requirements as well, and on balance the new form seems more onerous than the currently approved Form HUD-52725.

All of these steps (e.g. use a risk based approach to monitoring compliance, rely on inclusion of these matters in annual audits, use a certification process rather than a reporting process, and rely on available third party data on HA executive compensation) would provide the department with the oversight tools it requires and assure compliance with statutory compensation limits while unburdening HA staff of the reporting requirement and HUD staff of the requirement to assess the submitted reports. Given long term budget constraints facing assisted housing programs, both HUD and assisted housing administrators can ill afford unnecessary, unproductive administrative reporting.

Relationship with Asset Management

HAs operating public housing may have implemented asset management in connection with the department's revision of the Operating Fund eligibility formula. Agencies operating more than one Asset Management Project may use a central office cost center (CoCC) to manage overall administrative responsibilities. Resources to support activity for the CoCC may come from any revenue stream an agency has available. Those resources may come from one or several accounts in Section 8 and Section 9 (e.g. Housing Choice Voucher administrative fees, Project Based Rental Assistance fees, Project Based Housing Choice Voucher administrative fees, Public Housing administrative fees, fees charged for the management of resources unrelated to HUD administered housing assistance, and other non-HUD or non-federal revenue to the agency). In its guidance concerning resources flowing to the CoCC, the department has maintained that funds become "defederalized" once they move to the CoCC. Since initial guidance concerning asset management, HUD has placed at least one limit on the defederalized nature of CoCC resources specifically related to executive compensation from the CoCC. The department has refederalized the CoCC's defederalized funds in connection with compliance with statutory limits on the use of Section 8 and Section 9 resources for executive compensation.

With the changes it has proposed for Form HUD-52725, the department will require that agencies implementing asset management and using a CoCC for administrative costs disentangle the resources of the CoCC and identify the origin of funds used for executive compensation, whether that compensation is below or above the threshold established in appropriations statutes. **The requirement seems excessive. It appears that in only 4 of 10 federal regions is there much risk that executive compensation exceeds the statutory limitation and only for agencies managing more than 1,250 assisted units, a small proportion of the population HUD is requiring to report on executive compensation.**

Relationship between Form HUD-52725 and Form IRS-990

For undisclosed reasons, HUD has seemed unwilling to use existing IRS reporting requirements for purposes of collecting executive compensation information. While earlier reports asked for reportable compensation tied to entries on an employee's Form IRS W-2, the requirement went on to include the assessment and reporting of the value of a broad array of non-monetary compensation as well. In its current

information collection submission documents, the department appears to claim that some of this reporting on non-monetary compensation will no longer be required. It uses the terms, "Cash compensation," "Base salary," and "Bonus and incentive compensation." It would appear that HUD is no longer requiring reports on the value of the use of a company car or the allowance for use of a personal vehicle that does not result in reportable taxable income. However, HUD's instructions advise agencies to refer to a table in the instruction booklet for Form IRS-990 that lists 70 varieties of compensation to be reported in Schedule J of that form. In addition to items that clearly fall within the common understanding of "cash compensation," those items include such things as contributions to qualified retirement, 401k or 403b plans, defined benefit retirement plan accruals, health benefit plan premiums, medical reimbursement programs, life, disability or long term care insurance, personal legal or financial services, liability insurance, employer provided vehicles, subsidized parking, meal and entertainment allowances, and travel and moving expense reimbursement. It appears from the IRS table that HUD's language includes all of the forms of non-cash or deferred compensation explicitly included in the instructions in the existing form.

In addition to the definitional confusion introduced by the department's references to Form IRS-990, HUD has never acknowledged that the only people making less than \$100,000 per year on whom the IRS collects compensation information are corporate officers and members of boards of directors. HUD's collection covers the vast majority of HA executives who make less than, and often much less than \$100,000. For non-profit organizations, the IRS does not collect most of the information HUD gathers in connection with its compensation reporting protocol.

PHADA urges the department to reconsider this wasteful, duplicative information collection and replace it with collections that are more respectful of HUD's and HAs' available human resources and funds. There are tools that the department can use to achieve its expressed aims that are much less burdensome and that may provide more reliable and comparable information.

Thank you for the opportunity to submit these comments on HUD's proposed revisions to Form HUD-52725.

Sincerely

A handwritten signature in black ink, appearing to read "Tim G. Kaiser", written in a cursive style.

Timothy G. Kaiser
Executive Director