colorado NAHRO State Chapter of the National Association of Housing and Redevelopment Officials

Office of General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street, SW., Room 10276
Washington, DC 20410-0001

Re: Housing Choice Voucher Program — New Administrative Fee Formula, Proposed Rule [Docket No. FR–5874–P–03]

To Whom It May Concern:

On behalf of our Colorado NAHRO members, we would like to thank you for the opportunity to comment on the Department's proposed rule regarding its Housing Choice Voucher Program — New Administrative Fee Formula. The Colorado Chapter of NAHRO (National Association of Housing and Redevelopment Officials) is a membership driven organization whose purpose is to provide professional development, advocacy and networking opportunities for public housing and community development agencies as well as other individuals and organizations working to enhance the affordable housing industry and promote viable communities in Colorado.

1. HUD's Fee Study is Incomplete and Inadequate

HUD's proposed fee formula and potential 17 modifications represent a significant departure from the science of its administrative fee study and underscores that its study is incomplete. If adopted, the Department's proposed fee formula and other extensive fee modifications for comment, which are largely or completely divorced from the science of its fee study, would have a profound impact on our members ability to serve low-income households, property owners and our communities. Additionally, the outcomes resulting from HUD's potential 17 modifications have not been published. As a result, the impacts on a whole host of potential fee modifications to the proposed fee formula are completely unknown in order for us to make informed comments.

Additional or reprogrammed funding and time is needed in order for the Department to adequately complete the voucher administrative fee study in a way that properly deals with major outstanding issues in the study that have not been adequately addressed. Including the factors that the Department has excluded or not sufficiently formulated in its study may do a better job of capturing statistically significant drivers in *all* HAs' administrative costs. Given the implications of HUD's proposed fee formula, these factors are certainly worth the Department's time and effort to capture properly.

2. HUD's Proposed Rulemaking and Timeframes Are Premature

HUD's existing timetable for implementing a new formula is premature. HUD states that it will review all comments filed on or before October 4, 2016, and issue a final rule in the late Spring or Summer of 2017. HUD states that it expects to implement the new formula in CY 2018.

Over the last 17 years, appropriators have passed statutory language with the existing fee rate structure. For FY 2017, appropriators rejected the President's budget request to change the law to enable HUD to implement new fee rates based on its study formula and proposed rule. The House and Senate Appropriations T-HUD Subcommittees and Committees have asserted themselves in this process to provide the necessary checks and balances to HUD. Given the essential role Congress plays in this matter, HUD's unusual approach and stated timetables for implementing a new fee formula are premature.

3. Savings Are Miniscule Nationally But Will Result in Major Impacts at Local Level

In the national aggregate, HUD's proposed fee formula would result in savings of only two tenths of one percent (0.00226 percent) of *total voucher program funding*. If Congress appropriated the amount it enacted in FY 2015 for example, the savings resulting from HUD's proposed fee formula would be only 1.8 percent of the *total appropriated fee funding*.

While there are certainly HAs that stand to gain much-needed increases in their fee rates under HUD's proposed formula, there are also other HAs who would face an unnecessary existential threat to administer voucher programs for the low-income households and participating property owners in their communities. The consequence of our communities' ability to serve the affordable housing needs of low-income households now and into the future is too important for HUD not to make critical improvements to its study and fee formula.

We implore HUD to advocate for enough funds to fully fund administrative fees for *all* HAs, at a 100 percent proration of the existing statutory fee rate prior to the enactment of the Quality Housing and Work Responsibility Act of 1998.

4. Severe Funding Realities Will Undermine Both "Gainer" and "Decliner" HAs

Under the current two year budget law, Congress has the same amount of money available to allocate across all Non-Defense Domestic Discretionary (NDD) programs for FY '17 as it did for FY 2016. Unfortunately, the existing budget reality is unlikely to change anytime soon. Thus, there will not be additional funding, and it is unlikely the administrative fee proration will change much perpetuating what PHADA calls "de facto sequestration."

HUD has proposed an elaborate set of "floors" and "ceiling" scenarios in the event that the appropriated funding is insufficient. Unfortunately, all of the scenarios and measures HUD proposes mask the real need for the Department to revisit its study, and to derive more accurate fee rates for *all* HAs. No amount or design of "floors," "ceilings," or other stop gap measures are adequate to address what are inadequate fee rates for all HAs. The chaos and harm that will ensue from HUD's proposed fee formula and other modifications for HAs and the communities they serve warrant the Department developing scientifically-based fee rates for *all* HAs.

Current and future budgets for NDD programs are worse than they were 10 years ago, when "gainer" HAs under HUD's Operating Fund formula did not pan out to the degree the Department and many "gainer" HAs thought they would. Accordingly, severe funding realities now and into the future will undermine both "gainer" and "decliner" HAs under HUD's proposed formula.

5. HUD's "Apples-to-Oranges" Fee Comparisons Are Misleading

The Department's 2015 spreadsheet uses an "apples-to-oranges" comparison of 100 percent eligibility of its proposed fees versus an 81.565 percent proration of each HA's existing fee rate. Although well-intentioned, HUD's on-line tool and spreadsheet did not facilitate an easy use and understanding of its proposed fee formula. HUD's fee comparisons are neither transparent nor accurate, but contain misleading percentages for both "gainers" and "decliners." PHADA's analysis of HUD's "apples-to-oranges" spreadsheet comparison reveals that "gainer" agencies would not experience increases as high as those displayed by HUD, and "decliner" agencies would experience substantially deeper cuts than presented by the Department. Additionally, PHADA's analysis of HUD's spreadsheet shows that many "gainers" would actually be "decliners" and agencies displayed by the Department as having no change would actually be "decliners."

6. HUD's Proposed Formula Undervalues All HAs' Fee Eligibility

HUD attempted to address the impact of fee cuts on program staffing and quality by adjusting the study's cost estimates for cost-cutting actions taken between the time of the reconnaissance visit, when the HCV program was determined to be high performing and efficient, and the time of cost data collection. In large part due to continuous downward pro-rations in administrative fees since FY 2004, many agencies had to undertake administrative cost saving measures during the years preceding HUD's reconnaissance visits and study. HUD's other studies and PHADA's surveys of HAs, demonstrated this fact (www.phada.org/pdf/SurveySpecialEdition.pdf). We recommend the Department use its study protocols to capture sample HAs' cost-saving measures for years preceding its reconnaissance visits, in conjunction with their VMS, FDS and audited financial statements.

7. Proposed Fee Formula Undervalues Costs to Serve Elderly and Disabled Households and Overvalues Costs to Serve Households with Earned Income

It was a mistake for the study's research team and HUD to categorically exclude elderly and disabled households from its examination of households with earned income at the 60 sample HAs and for all HAs. Some elderly and disabled households with fixed incomes also have earnings. This is important because HUD's study found that the percentage of households with earned income is a factor that ranks third highest in affecting HAs' administrative costs under the formula, but left out the applicable elderly and disabled households to whom these HAs' administrative expense applies. HUD should correct this mistake in its study and fee formula.

The Department's study results may have overvalued the percentage of households with earnings relative to many agencies' administrative costs to serve other populations including but not limited to elderly and disabled households and other voucher program functions. This is not to suggest that households with earnings do not have significant impacts on HAs' administrative costs, they do. However, until and unless HUD revisits its study to properly take into account sample HA's income verification methods and discretionary interim recertification policies, the weight of the factor for households with earnings on administrative costs relative to other variables is likely overvalued.

Scenarios where elderly and disabled households bring in a shoebox filled with unreimbursed medical and disability expense receipts require a great deal of work for HAs. HUD's exclusion in the study formula of elderly and disabled households with unreimbursed medical and disability expenses is not reflective of many agencies' relative administrative expenses. This is one of the reasons that HAs in States (e.g. FL, ME, WA, PA, etc.) that have significantly greater percentages of elderly and disabled voucher-assisted households would experiences substantial reductions in their administrative fees stemming from HUD's proposed fee formula.

Similar to the way HUD is contemplating *additional* fee eligibility beyond the proposed fee formula for a wide range of special populations, it would be appropriate to include populations such as elderly and disabled households, households with earnings, etc. through an "add-on" fee rather than through the base formula. The reason for this is that Department's fee formula should not result in unintended consequence by incentivizing and ultimately determining, which populations the Federal government thinks local HAs should serve.

This is one of several examples where, over time, HUD's proposed fee formula would ultimately circumvent local, regional and State HAs' priorities for meeting the unmet affordable housing needs of low-income households in favor of the Department's priorities. The way HUD's proposed fee formula treats or omits certain household types may result in a disparate and adverse impact of some protected classes under Federal law. We respectfully request the Department publish its analysis of the potential or likely impact of its proposed fee formula as it pertains to disparate impacts of protected classes.

8. Revised Benefit Load Variable Is Better But Remains Inadequate

HUD's proposed "benefit load" variable will more accurately reflect the variation in costs for all benefits that are paid on behalf of HCV employees, as opposed to using health insurance costs as a proxy to account for the variation in all benefit costs. However, the way HUD plans to use statewide "benefit load" averages for all HAs' within each state, fails to accurately capture these costs for individual HAs' operating in metropolitan areas.

9. A Credible Rental Housing Market Variable Is Still Needed in the Fee Formula

Fortunately, HUD removed the small area rent ratio (SARR) variable from its study fee formula. SARRs, which rely on HUD's Small Area Fair Market Rents (SAFMRs), are deeply flawed. Because Section 8 voucher programs are primarily *rental* market-based, it is essential that the formula include an accurate and valid rental market variable(s) in the formula for the "availability of affordable housing" category, without returning to the flawed SARR variable.

10. Support for Additional Fees for A Range of Household Populations and Purposes

We believe that it is important for HUD to study and capture administrative costs for an adequate sample of: special voucher programs (e.g. HUD-VASH, Family Unification Program, Non-Elderly Disabled program), homeless households, performance incentives, and expanding housing opportunities. This should be further studied to determine the administrative cost and each HA's fee eligibility when a revised fee formula is proposed and before HUD implements such a change.

The proportionality of special purpose vouchers to each HAs' voucher portfolio and the amount of administrative time and costs to assist special populations vary widely across agencies. Notwithstanding the fact that HUD should conduct further research on the administrative costs associated with certain household populations, we support *additional* fees to address program priorities such as special voucher programs, serving homeless households, and expanding housing opportunities.

As stated above, it would also be appropriate to include populations such as households with earnings, elderly and disabled households, etc. through an "add-on" fee rather than through the base formula. However, we support an "add-on" fee to the base formula only in so far as Congress and the Department first fund the base fee formula at 100 percent of eligibility, and then provide *additional* fee funding for the above purposes. In other words, we would not support this measure, if HUD funded any of these "add-on" categories at the expense of first funding all HAs' base fee formula eligibility at a 100 percent proration on an ongoing basis.

11. Support for Proposed Portability Fees at Receiving and Initial HAs

We support the Department's proposed treatment of portability fees. We support the aspect of portability fees specified in the part of HUD's proposed rule which states, "In place of having the receiving HA bill the initial HA for a portion of their administrative fee, the study recommends that the receiving HA receive 100 percent of their own fee directly from HUD for any port-in vouchers under HAP contract. The initial HA would not receive a regular administrative fee from HUD for vouchers that had ported out of its jurisdiction since HUD is compensating the receiving HA directly. However, the initial HA would receive a separate fee from HUD equal to 20 percent of their own fee for any voucher for which the initial HA is being billed for HAP under the portability option."

12. HUD Does Not Account for Additional Mandatory Program Changes

HUD stated that its time and motion study methodology, which looked at discrete administrative tasks, would enable the Department to adapt its fee formula in the future in order to account for subsequent mandatory changes to the voucher program. Since the time of HUD's study, there have been several mandatory changes to the program, but there was no mention of the Department's plans to account for the administrative costs stemming from those changes in its proposed fee formula. We request HUD address this issue, if/when it revisits its study and responds to commenters.

As a result of decreasing funding levels for housing programs, Congress directed HUD to report on administrative burdens confronting housing authorities and to streamline regulations in light of budget constraints. Provisions in the final streamlining rule did not go far enough to provide needed flexibility in order to sustain operations and preserve the existing housing stock. In fact, it appears that there is a net increase in HAs' administrative requirements stemming from mandatory program changes. This is evidenced by the new Affirmatively Furthering Fair Housing reporting requirements, Section 3, the non-smoking rule in public housing, and others. Four recent HUD issuances alone include 6.47 million hours of reporting and recordkeeping burdens (these are HUD's numbers) for agencies administering HUD programs.

More details on this topic are covered in PHADA's Issue Brief titled, *With Funding at Historic Lows, HUD Keeps Increasing Burdens on Housing Authorities*, accessible at: www.phada.org/pdf/RegulationsBurdensIssueBrief.pdf

On behalf of Colorado NAHRO, we would like to thank you for the opportunity to comment on the Department's proposed HCV administrative fee formula.