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June 14, 2017

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Office of General Counsel
Regulations Division
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777, Docket No. FR-6030-N-01

To Whom it May Concern:

Ballard Spahr is one of the largest law firms in the country, with approximately 500 attorneys and 13 offices. The firm's attorneys practice in five major departments: Business and Finance, Intellectual Property, Litigation, Public Finance, and Real Estate. In addition, attorneys in the firm participate in more than 40 interdepartmental practice groups. Our Housing Group is one of the largest practice groups, with more than 70 attorneys who represent clients in the acquisition, development, expansion, disposition and operation of nearly every type of housing. Our clients include for-profit and non-profit housing developers and operators, public housing authorities (“**HAs**”) and housing finance agencies.

Ballard Spahr appreciates the opportunity to submit comments in response to the notice referenced above (the “**Notice**”) that identify existing regulations that may be outdated, ineffective, or excessively burdensome and propose solutions to make these regulations more workable for the U.S. Department of Housing and Urban Development (“**HUD**”), HAs and HA clients.

The attached recommendations take into account the uncertain funding environment housing authorities face. In such situations, it is only reasonable to reduce regulatory burdens so the funding can be targeted at providing and maintaining the housing infrastructure. At the same time, we are mindful of key statutory provisions and the need to maintain tenant protections as well as fair housing, civil rights, environmental, and wage rate requirements.

To that end, please find attached at Attachment A a list of proposed modifications to existing regulations. The proposed modifications are grouped into two categories:

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- A. *Project-Based Development.* These proposed modifications would enable HAs to move toward a project-based development and operations model. It would make public housing requirements, to the extent possible, consistent with Section 8 voucher requirements and otherwise eliminate costly regulatory requirements while maximizing the effectiveness of Federal expenditures.
- B. *Cut Red Tape in Public Housing and Section 8 Voucher Operations.* These proposed modifications would streamline public housing and voucher operations requirements to achieve administrative cost savings while ensuring that HAs and HUD have the information necessary to monitor program compliance with Federal requirements.

We believe that these proposed modifications would provide HAs with greater flexibility in operational procedures in order to get the most impact out of every Federal dollar while continuing to respond to local needs and conditions. This greater flexibility would also enable HAs to continue to provide high-quality housing opportunities, create jobs, and promote economic independence of low-income families, all in within a framework that respects the rights of HA clients.

Ballard Spahr also supports the comments submitted by the American Bar Association Forum on Affordable Housing and Community Development Law in response to the Notice.

We appreciate your consideration of these comments.

Sincerely,



Amy M. Glassman

AMG/kbc

ATTACHMENT A
PROPOSED REGULATORY MODIFICATIONS

A. Modifications for Project-Based Development

	Applicable Provision	Description of Proposed Modification	Regulatory Citation
1.	Davis-Bacon wage rates	Davis-Bacon and Related Acts can be challenging to implement, particularly for mixed-use and mixed-income projects. HUD has not issued fulsome guidance that addresses the applicability of Davis-Bacon to these types of projects, and the informal guidance provided by HUD in recent years has increased administrative burdens on HAs and project developers. For example, informal guidance has required the use of separate construction contracts for HUD-assisted and non-assisted parts of a development project and the keeping of separate records for time spent by each worker on the HUD-assisted portion of construction. We ask that HUD issue official guidance that would permit HAs and project developers to pay Davis-Bacon wages on a pro rata basis such that a single contract would cover both the HUD-assisted and non-assisted parts and the workers would be paid Davis-Bacon pro rata based on the percentage of the project that is HUD-assisted. This could be determined based on square footage, unit count or similar metrics.	Not applicable
2.	Demolition/Disposition Application Process	<p>Repeal the existing regulations and replace them with a streamlined process for all demolitions/dispositions that is consistent with Section 18 of the Housing Act, but includes minor modifications to regulatory procedures by permitting self-certification for various elements included in the application. The streamlined process would include a two-part submission as described below.</p> <p>Part 1 of the application would occur in the Annual Plan, with added information including the justification/need for the activity; a certification regarding the occurrence of the</p>	24 CFR part 970

	Applicable Provision	Description of Proposed Modification	Regulatory Citation
		<p>public hearing and resident consultation requirements; and the Board resolution constituting Board approval of the application.</p> <p>Part 2 of the application would include a subsequent letter to SAC identifying the proposed demolition/disposition activity from the Annual Plan; certifying that the activity is authorized in and consistent with the Annual Plan; certifying that the relocation plan is consistent with statutory requirements; describing the amount and use of net proceeds for eligible purposes; certifying that, for dispositions, residents were given the opportunity to purchase the property or that the property meets an exception to the offer of sale requirement; and certifying that residents and government officials have been consulted.</p> <p>Documentation of the above will be kept in the HA's files and will be made available to HUD for inspection.</p> <p>Environmental approval would be obtained and forwarded to SAC.</p> <p>Applications will be approved in an accelerated timeline and will only be disapproved if HUD determines, in accordance with Section 18, that a certification made is clearly inconsistent with information and data available to or requested by HUD or if the application was not developed in consultation with residents and their governing boards or government officials.</p> <p>In addition to, or in lieu of, the above process, HUD could modify the existing regulations as follows:</p>	

	Applicable Provision	Description of Proposed Modification	Regulatory Citation
		<p>Modify permissible situations in which no resident offer is required to include the following: units that have been legally vacated in accordance with the Choice Neighborhoods program, units requested by a City as part of a property swap agreement with the HA or broader City-sponsored neighborhood transformation initiative, or a scattered site parcel to be conveyed to a not-for-profit or governmental entity to further neighborhood goals.</p> <p>Confirm that the process for determining fair market value (FMV) for an HA may always include one appraisal, combined with an offer for public sale, and no further HUD approvals required related to determination of FMV if the property is sold to the highest bidder and the process is documented. The foregoing would apply even if public sale does not bring buyers who will pay the full appraised value.</p> <p>Confirm that the process for a below-market price disposition for commensurate public benefit includes conveyance of property to a non-profit or governmental entity to sustain neighborhood objectives or a city-wide plan, particularly for purposes of conveying single or scattered-site parcels that the HA has determined are not usable by the HA due to zoning restrictions or other factors.</p> <p>Although not regulatory, and simply included in a HUD notice, limit the application of any additional use restrictions for dispositions for commensurate public benefit to those that are intended to include affordable housing.</p> <p>Repeal requirements regarding the order in which local consultations with government and residents and Board</p>	<p>24 CFR 970.9(b)</p> <p>24 CFR 970.19(c)</p> <p>24 CFR 970.19(b)</p> <p>24 CFR 970.7(a)(13)</p>

	Applicable Provision	Description of Proposed Modification	Regulatory Citation
		approvals must occur. Instead allow them to occur in any order so long as the necessary approvals are obtained.	
3.	Voluntary Conversion of Housing to Tenant-Based or Project-Based HCVs	Modify the regulation to establish streamlined approach for voluntary conversion of public housing to HCVs. Under the streamlined approach, the conversion assessment would be conducted through certification to HUD and could be completed using alternate methodologies than those promulgated by HUD regulation or notice. The HA would submit to HUD a certification that it has: determined that provision of Section 8 assistance will be less expensive than public housing; analyzed the market value of the public housing project; and analyzed the rental market conditions relevant to the analysis. The HA would submit for HUD's approval a plan that meets the statutory criteria for conversion of the public housing to HCV tenant- or project-based assistance.	24 CFR 972, subpart B. The streamlined process of the assessment is authorized by Section 22(b)(3) of the Housing Act, which provides that HUD may "waive any or all of the requirements" regarding the specific assessment to be conducted as a precursor to a conversion action "or [may] otherwise require a streamlined assessment with respect to any public housing project of class of public housing projects."
4.	Asset Management	Modify the regulation to exempt HAs that own and operate 400 or fewer public housing units. This change is consistent with the requirements set forth in recent appropriations bills.	24 CFR 990.260
5.	Mixed Finance	Modify the regulation to allow a HA to propose an acceptable, alternate methodology for calculating TDCs consistent with Section 6(b) of the Housing Act and a justification for TDCs that are different for those developed by HUD.	24 CFR 905.314(c); 24 CFR 905.604(c)(4)
6.	Site Selection	Modify the regulation to allow a HA to acquire future public housing sites without prior HUD approval, subject to the HA's certification to HUD that appropriate environmental reviews are completed and the site meets site and neighborhood standards (including any alternate site and neighborhood standards approved). The HA would be required to notify HUD of the site acquisition, and HUD would include in its annual audit/review confirmation that	24 CFR 905.608

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		<p>the acquisition was completed in accordance with the foregoing process. The limited situations in which a HA could acquire without prior HUD approval could include mixed finance or other development situations in which parcels adjacent to HA property need to be acquired in order to complete the development.</p> <p>Modify the regulation to allow a HA to propose alternate site and neighborhoods standards for new construction and rehabilitation of project-based units. The alternate standards would include a self-certification process by which the HA would certify that a particular project meets the standards. The alternate standards would be consistent with local needs and would be consistent with applicable fair housing/civil rights requirements.</p>	24 CFR 983.57
7.	Prohibition of Assistance for Units with Other Subsidy	Modify the regulation to allow a HA to use PBV assistance with other subsidy covering operating costs at the same housing unit, so long as the subsidy is not duplicative and so long as statutory and regulatory requirements for those programs are followed.	24 CFR 983.54

B. Proposed Modifications to Cut Red Tape in Public Housing and HCV Operations

	Applicable Provision	Description of Proposed Modification	Regulatory Citation
1.	Alternate Form HUD-9886, Authorization for the Release of Information/Privacy Act Notice	Modify the regulation to allow a HA to propose an alternate form to the Form HUD-9886 that contains all appropriate privacy protections for obtaining income and other sensitive information about applicants/residents, but carries an expiration date beyond the 15 months included in the Form HUD-9886.	42 U.S.C. 3544 requires the HUD Secretary to approve the form used and provides it must expire after a reasonable period. HUD approval of the HA’s proposed form would constitute the requisite approval and the HA would need to request a reasonable expiration date.
2.	Limit Number of Interim Recertifications	Modify the regulation to allow a HA to limit the number of interim recertifications that could be requested by a family during each year. The goal would be to realize efficiencies, particularly in situations in which a family tends to request multiple interim recertifications per year.	24 CFR 960.257 (public housing); 24 CFR 982.516 (HCV)
3.	Utility Allowance Calculations	<p>Modify the regulation to eliminate the requirement to revise allowance any time there is a chance of 10% or more in utility rates. Given the potential for wide fluctuations in utility rates, frequent revisions are not always prudent or cost effective. The HA could still have discretion to revise allowances between annual reviews; such revisions simply would not be required. The revised regulation could still require annual revision of rates.</p> <p>Modify the regulation to allow a HA to modify utility allowance calculation requirements if the HA proposes an alternate policy, such as requiring residents to subscribe to local programs that reduce utility rates for low-income customers or replacing the utility schedule with a standard deduction based on the HA’s experienced median utility allowances by bedroom size, or similar evidence-based methodology.</p>	<p>24 CFR 965.507(b) (public housing); 24 CFR 982.517(c) (HCV)</p> <p>24 CFR 965, subpart E (public housing); 24 CFR 982.517 (HCV)</p>

		Modify the regulation to add an allowance for air conditioning in public housing if air conditioning is common in the locality.	24 CFR 965.505(e) (public housing air conditioning)
4.	Uniform Physical Condition Standards (UPCS)	Modify the regulation to allow a HA to request a determination by the HUD Secretary that State or local housing code meets or exceeds UPCS, and that the HA may follow UPCS instead.	24 CFR 5, subpart G
5.	Processing Procedures for Designated Housing Plans	Streamline the processing requirements for designated housing plans and renewals. Modifications could include the timing and requirements for 2-year renewals of plans, which are conveyed in HUD notices.	24 CFR 945, which is no longer applicable; Notice PIH 2005-2
6.	Oral Briefings for Program Participants	Repeal the requirement to conduct oral briefings for all HCV participants. Instead, require that participants receive written materials in accessible formats and in compliance with limited English proficiency requirements. Also require that participants be verbally informed that the HA will conduct an oral briefing at the participant's request and/or if the participant has difficulty reading or understanding the content of the briefing packet.	24 CFR 982.301
7.	Income Verification, Family Composition, and Resident Eligibility	Modify the regulation to allow a HA to adopt an alternate, reasonable policy for verifying family income and composition and for determining resident eligibility. The alternative policy would still need to comply with the applicable provisions of the Housing Act, but the HA would be authorized to develop alternate procedures to those specified in regulations.	24 CFR 982.516 and 982, subpart E
8.	Alternate Forms	Modify the regulation to allow a HA to develop alternate forms to the HUD-prescribed HAP and AHAP. Any statutorily-required provisions would be required to be included in the alternate forms.	24 CFR 982.451(a)(1), 983.152(a), 983.202(a)

9.	Family Self-Sufficiency	Modify the regulation to allow a HA to vary the requirements of the FSS regulations as needed to cut program costs while maximizing the investment of the HA and the FSS participant in the program.	24 CFR part 984
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