CLPHA
Strengthening Neighborhoods. Improving Lives.

RAD Collaborative

RENO & CAVANAUGH PLLC

June 12, 2020

Toby Halliday
Director, Office of Asset Management & Program Oversight
Office of Housing
U.S. Department of Housing and Urban Development
451 7th Street, S.W.; Room
Washington, DC 20410

RE: COVID-19 and the Impact on Operating Cost Adjustment Factor Restricted Properties

Dear Mr. Halliday:

On behalf of the Council of Large Public Housing Authorities ("CLPHA"), the RAD Collaborative, and Reno & Cavanaugh, PLLC ("Reno & Cavanaugh"), we raise the following concerns about growing numbers of Project-Based Section 8 properties reeling from the high costs of coping with the Coronavirus (COVID-19). In particular, those properties with rent adjustments restricted to an Operating Cost Adjustment Factor ("OCAF") alone have the least capacity to cope with the staggering costs, which places their long-term viability at risk.

CLPHA is a non-profit organization that works to preserve and improve public and affordable housing through advocacy, research, policy analysis, and public education. We support the nation's largest and most innovative public housing authorities ("PHAs") by advocating for policies and programs that most effectively serve low-income residents and provide them with long-term economic opportunities. Our members own and manage nearly half of the nation's public housing program, administer a quarter of the Housing Choice Voucher ("HCV") program, and operate a wide array of other housing programs. CLPHA members collectively serve over one million low-income households.

The RAD Collaborative, organized by CLPHA with the support of the National Equity Fund ("NEF"), HAI Group, Reno & Cavanaugh, PLLC, and CF Housing Group, consists of interested Public Housing Authorities and their partners using the Rental Assistance Demonstration ("RAD") to preserve and revitalize their public housing properties. Through an open system, the RAD Collaborative facilitates communication, information sharing and productive relationships among Housing Authorities, their residents and development and financing partners, advisors and transactional service providers, local government, policy makers and other stakeholders working to implement RAD across the country.

Reno & Cavanaugh has represented hundreds of PHAs throughout the country. The firm was founded in 1977, and over the past three decades has developed a national practice that encompasses the entire real estate, affordable housing, and community development industry. Though our practice has expanded significantly over the years to include a broad range of legal and legislative advocacy services, Reno & Cavanaugh's original goal of providing quality legal services dedicated to improving housing and communities still remains at the center of everything we do.

As you are aware, responding to COVID-19 and protecting residents and staff has proven enormously expensive for multifamily owners and management agents. Cleaning and supply costs have more than doubled and in some cases tripled, far outstripping annual budgets in less than two months' time. Similarly, insurance costs have escalated rapidly, as have staffing expenses as employees implement additional procedures to ensure residents and employees are safe and protected per CDC guidelines. No part of project operations is untouched. Property owners and management agents have no choice but to implement drastic measures to maintain operations, such as forgoing management fees, deferring payroll and postponing non-critical maintenance.

For those properties with the flexibility to obtain budget-based rent increases, some degree of relief may be available the following year provided they can wait that long. For properties assisted with project-based vouchers ("PBV"), the CARES Act provides some additional resources through supplemental funding for housing assistance payments and administrative fees. However, OCAF only rent restricted properties have no safety net.

This is not a new issue. For more than 20 years, similarly situated OCAF only rent-restricted properties have suffered and declined. As you know, following an initial market-based rent adjustment, the Mark-to-Market ("M2M") program binds participating properties to a 30-year use restriction and OCAF only rent adjustments. Of the more than 2,600 properties restructured under this program, HUD reports that 80 percent have rents below Fair Market Rents, and significant numbers are financially and physically distressed.

It is common knowledge that actual operating costs rapidly outstripped HUD's modest OCAF annual increases. In many cases, M2M participating owners had to advance funds just to maintain normal operations per HUD's required standards. Were it not for these advances a sizeable number would default, and these affordable assets would be lost. Because OCAFs typically lag behind real-time costs by at least two to three years, the damage caused by underfunded operations lingers. Additionally, OCAFs are calculated on a state-wide basis, thus minimizing locality-specific cost spikes and further harming affected properties. Furthermore, when natural disasters strike, catastrophic losses cannot be made up under OCAF only rent regimes. The nation-wide COVID-19 pandemic further highlights the systemic inequities of restricting rent increases to OCAF only.

RAD is HUD's flagship housing preservation program that transforms capital needs-challenged public and other housing into more stable Project-Based Rental Assistance ("PBRA") or PBV assisted developments. Just as with M2M, owners who elect to convert to PBRA are subject to long-term use restrictions and OCAF only rent increases. It is only a matter of time until the OCAF rent restrictions fail to adequately support project operations, which the rapidly escalating COVID-19 costs demonstrate.

We appreciate HUD's recent May 28, 2020 memorandum regarding allocation of the $1 Billion Dollars of supplemental CARES Act appropriations to PBRA properties. We understand that $800M of such funding has been allocated to offset decreased tenant rent payments due to falling tenant income. We look forward to receipt of further guidance regarding procedures to distribute the remaining $200 Million Dollars, which we expect the Department is reserving for those properties hardest hit by COVID-19. We hope that there will be adequate funds to address the tremendous demand driven by the extraordinary costs of the COVID-19 response.

While the supplemental CARES Act funding is an important step towards shoring up property operations at this critical time, a long-term solution is needed, particularly for OCAF only properties with restricted funding options.

As you know, HUD's Section 8 regulations anticipate that conditions outside of project owners' control will render OCAF adjustments inadequate to meet project operations. In these cases, HUD has the discretion to authorize use of budget-based rent adjustments, to capture the actual cost increases experienced. However, HUD has yet to exercise that discretion.

HUD asserts that statutory impediments in the Multifamily Assisted Housing Reform and Affordability Act of 1997 ("MAHRA") prevent implementation of such regulatory relief for M2M properties. We note that other Section 8 properties have an option to request budget-based rents in lieu of OCAF, and as noted above, HUD's regulations support this. The RAD amendments to MAHRA provide for similar relief for affected properties via an operating cost factor established by the Secretary.

We recognize, however, that even budget-based rent adjustments provide only limited relief. Ideally, all PBRA properties, whether participating in the M2M program or RAD, should have the ability to adjust rents to market levels at least once every 5 years, as MAHRA permits for other Section 8 properties. We plan to pursue legislative solutions to address these issues, and encourage the Office of Housing to support such measures. In the meantime, we respectfully request that your office implement additional operating cost adjustments to help preserve those Section 8 affordable assets burdened by pandemic-driven costs.

We look forward to engaging with you further on these important issues. Should you have any questions, please feel free to reach out to Lisa Tunick at ltunick@renocavanaugh.com or 202-804-6932. Thank you for your consideration.

Sincerely,

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| Sunia Zaterman | Patrick M. Costigan | Lisa Tunick |
| Executive Director | Strategic Advisor | Member |
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