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March 20, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Dr. Ben Carson
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Carson,

Over the past decade, I have repeatedly expressed concerns to you and your predecessors at the Department of Housing and Urban Development (HUD) about lax federal oversight of spending by Public Housing Agencies (PHAs).¹ One ongoing area of concern is the nearly total lack of HUD oversight over millions of dollars in federal funds used to pay fees to PHA central office cost centers (COCCs) under the asset management business model adopted by some of the country's largest PHAs. Under the asset management model, a portion of the federal dollars that go to support a PHA's projects are paid in the form of fees to the PHA's business unit, the COCC, in exchange for its provision of property management, bookkeeping, and other administrative services. According to one HUD source, in 2016, more than 600 PHAs had COCCs, and these COCCs accounted for more than 1.9 billion dollars in total revenue.²

Even though the COCC is part of a PHA and plays a critical management role, once deposited into a COCC's account, public funds lose their federal designation and cease to be

¹ See, e.g., Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Hon. Dr. Ben Carson, Secretary, U.S. Department of Housing and Urban Development (March 8, 2017), available at <https://www.grassley.senate.gov/sites/default/files/constituents/2017-3-8%20CEG%20to%20HUD%20%28Buffalo%20Municipal%20Housing%20Authority%20conference%20spending%29.pdf>; "Grassley Conveys Housing Concerns to HUD Secretary Nominee Carson" (January 4, 2017), available at <https://www.grassley.senate.gov/news/news-releases/grassley-conveys-housing-concerns-hud-secretary-nominee-carson>; "HUD Releases Audit of Omaha Housing Authority After Grassley's Prodding" (July 27, 2015), available at <https://www.grassley.senate.gov/news/news-releases/hud-releases-audit-omaha-housing-authority-after-grassley%E2%80%99s-prodding>; Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, and Hon. Mark Kirk, U.S. Senator, to Hon. Julian Castro, Secretary, U.S. Department of Housing and Urban Development (October 23, 2014), available at <https://www.grassley.senate.gov/sites/default/files/news/upload/CEG%20and%20Kirk%20to%20HUD%20%28MTW%20reserve%20funds%29%2C%2010-23-14.pdf>; Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on the Judiciary, to Hon. Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development (June 24, 2014); Hon. Charles E. Grassley, Ranking Member, U.S. Senate Committee on Finance, to Hon. Shaun L.S. Donovan, Secretary, U.S. Department of Housing and Urban Development (October 25, 2010), available at <https://www.finance.senate.gov/imo/media/doc/2010-10-25%20Letter%20to%20HUD.pdf>.

² U.S. Department of Housing and Urban Development, "Los Angeles, CA Listening Session: Proposed Changes to the Central Office Cost Center (COCC)" (December 2016), available at <https://www.hud.gov/sites/documents/COCCPRES.PDF>.

subject to rigorous federal oversight.³ In the absence of federal oversight, taxpayers have to rely on PHA management, Boards of Commissioners, and state and local governments to ensure that taxpayer dollars are spent properly.

In the absence of oversight, PHAs have not always proven themselves good stewards of taxpayer funds. When the HUD OIG reviewed PHA activities in 2014, it found evidence of excessive fees and uses of funding for questionable expenses including excessive salaries and bonuses, and, in one case, a seven-figure severance package.⁴ More recently, a top administrator at the Indianapolis Housing Agency (IHA) reportedly decided to take fourteen employees on an \$1100 golf outing as a “team-building” event. When questioned about the trip, the IHA reportedly stated:

All Director’s budgets are funded through the Central Office Cost Center (COCC) which covers the administration of the IHA. COCC is funded by management fees received from the properties and other administrative fees charged. Because the money comes from fees and not directly from HUD, the funds are not considered federal funds.⁵

According to reports from February of this year, the Executive Director of the Columbia Housing Authority, which oversees the property where two people recently died of carbon monoxide poisoning, reportedly makes more than \$167,000 per year.⁶ His salary, which is reportedly drawn from the PHA’s COCC, is several thousand dollars above the federal cap for a PHA executive.⁷ While it is lawful under certain circumstances for a PHA executive to receive a

³ A 2006 planning document sent by HUD to housing agency executive directors prior to the implementation of the asset management business model described the lack of oversight under the new system as a “benefit.” A section of that document devoted to explaining how fees would be paid to COCCs under the new system states: “If adopted across all Public and Indian Housing (PIH) programs, HUD’s monitoring activities would be greatly reduced. HUD would no longer need to evaluate whether a PHA’s allocation system was ‘reasonable.’ Rather, HUD would only need to determine that the PHA charged a reasonable fee. HUD would also not need to monitor the spending of fee income, i.e., the activities of the central office cost center. HUD monitoring would be limited to ‘front-line’ expenses. Funds received by the central office cost center to operate public housing, provided they were generated through reasonable fees, would not be subject to HUD review.” See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing *Preparing for Asset Management Under the New Public Housing Operating Fund Rule (24 CFR 990) A Planning Document* (June 1, 2006), available at https://www.hud.gov/sites/documents/DOC_9696.PDF.

⁴ The severance package was negotiated for a wrongful termination settlement with the City of Los Angeles and was paid with expenses from the central office cost center. HUD OIG Audit Report 2014-LA-0004 (June 30, 2014), p. 12, available at <https://www.hudoig.gov/sites/default/files/documents/2014-LA-0004.pdf>.

⁵ Rafael Sanchez, “CALL 6: Indianapolis Housing Agency defends spending \$1,100 on employee golf outing” RTV 6 Indianapolis (September 26, 2018), available at <https://www.theindychannel.com/news/call-6-investigators/call-6-indianapolis-housing-agency-defends-spending-1-100-on-employee-golf-outing>.

⁶ WLTX 19, “Will Gilbert Walker Receive a State Pension” (February 22, 2019), available at <https://www.wltx.com/article/news/local/allen-benedict-court/will-gilbert-walker-receive-a-state-pension/101-4bfb938a-1b8a-4cca-ad7c-3d6a1014f87c>.

⁷ Under Sec. 222 of the Consolidated Appropriations Act of 2019, “None of the funds made available by this Act, or any other Act, for purposes authorized under section 8 (only with respect to the tenant-based rental assistance program) and section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), may be used by any public housing agency for any amount of salary, including bonuses, for the chief executive officer of which, or any other official or employee of which, that exceeds the annual rate of basic pay payable for a position at level IV of the Executive Schedule at any time during any public housing agency fiscal year 2019.” The cap was the same under the Consolidated Appropriations Act of 2018. Level IV of the executive schedule is currently \$164,200 per year.

salary in excess of the federal cap, only funds that originate from non-federal sources may be used to pay the excess portion. Although HUD collects data on the salaries of PHA executives, the data collected have not been made public beyond the figures for 2016. Therefore, there is no way for the public to know whether or not the executive's salary complies with federal law.⁸

Experience teaches that some skepticism here is warranted. In the past, absent much needed public transparency, executive salaries have not always complied with the law. According to the most recent public data on executive compensation shared by HUD, in 2016, nine PHA executives were paid with federal funds at an amount that exceeded the federal cap. Fifteen executives received total compensation amounts that ranged from just over \$300,000 to more than \$650,000.⁹

In 2016, after the HUD OIG and I continued to raise concerns about lax oversight of COCC accounts, HUD finally agreed to revise its rules so that the public funds going into them would retain their federal designation and thus be subject to federal oversight. The Department stated that it would complete the rulemaking process by December 2017.¹⁰ However, three years have now passed since HUD expressed its intent to act, and the proposed changes do not appear to have been implemented.

Instead, over the past three years, it appears that HUD has dragged its feet. From October to December 2016, HUD held a series of "listening sessions" with PHA executives working under the asset management system, during which it told attendees that it planned to "[r]e-federalize Section 8 & 9 fee income."¹¹ HUD never made the changes.

In May of last year, HUD published a new version of its contract with PHAs, known as the Annual Contributions Contract (ACC), and announced that the contract would become effective as soon as PHAs began drawing down capital funds from 2018.¹² The new version of the ACC contains language that some stakeholders have interpreted as an effort to re-federalize fee income.¹³ However, in October 2018, HUD announced that it was retroactively nullifying

Salary Table No. 2018-EX, available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/EX.pdf>.

⁸ "Public Housing Agency Executive Compensation – CY 2016", available at https://www.hud.gov/program_offices/public_indian_housing/reac/rd/cy16phaec.

⁹ *Id.*

¹⁰ Letter from Milan M. Ozdinec, Deputy Assistant Secretary, Public Housing and Voucher Programs, to Housing Authority Executive Directors (April 1, 2016), available at <https://www.renocavanaugh.com/sites/default/files/hud-notices/D0530226.PDF>.

¹¹ U.S. Department of Housing and Urban Development, "Los Angeles, CA Listening Session: Proposed Changes to the Central Office Cost Center (COCC)" (December 2016), available at <https://www.hud.gov/sites/documents/COCCPRES.PDF>.

¹² Annual Contributions Contract HUD-53012 (ACC), available at <https://www.hud.gov/sites/dfiles/PIH/documents/HUD-53012ACC.pdf>; also see: National Law Review "HUD Rescinds New Form of Annual Contributions Contract" (October 18, 2018), available at <https://www.natlawreview.com/article/hud-rescinds-new-form-annual-contributions-contract>.

¹³ According to the new PHA, "operating receipts" are defined as: "All rents, revenues, income, and receipts accruing from, out of, generated by, or in connection with the ownership or operation of public housing, including grant funds received pursuant to HUD Requirements and is not limited to income from fees for services performed..." among other sources of income. Program receipts include operating receipts and "shall only be used to pay for public housing program expenditures, unless otherwise allowed by HUD Requirements." See "60-Day Notice of Proposed Information Collection: Comment Request: Agency Information Collection Activities: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds", available at

that new contract and reverting to the previous one.¹⁴ In December 2018, HUD sought comments on a revised version of its new ACC.¹⁵ During that comment process, which closed three weeks ago, some PHA executives expressed opposition to provisions that they categorized as an attempt to re-federalize fee income.¹⁶ One commenter referred to these provisions as an “underhanded effort [to] refederalize fees paid to a PHA’s COCC.”¹⁷

There is nothing “underhanded” about seeking transparency in how taxpayer dollars are spent.¹⁸

These developments raise important questions about HUD’s commitment to revising its regulations and guidance, its anticipated timeline for putting the new ACC into effect, and its plans for conducting future oversight of federal spending. Accordingly, please contact my office to schedule a briefing, and respond to the following no later than April 3, 2019:

1. Why did HUD fail to update regulations and re-federalize asset management fees after previously indicating that it would do so by December 2017?
2. When does HUD plan to put its new ACC into effect? Before doing so, will HUD make substantive changes to the version that was posted for public comment in December 2018? If so, please describe any expected changes.

<https://www.federalregister.gov/documents/2018/12/27/2018-28095/60-day-notice-of-proposed-information-collection-comment-request-agency-information-collection>.

¹⁴ National Law Review, “HUD Rescinds New Form of Annual Contributions Contract” (October 18, 2018), available at <https://www.natlawreview.com/article/hud-rescinds-new-form-annual-contributions-contract>.

¹⁵ “60-Day Notice of Proposed Information Collection: Comment Request: Agency Information Collection Activities: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds”, available at <https://www.federalregister.gov/documents/2018/12/27/2018-28095/60-day-notice-of-proposed-information-collection-comment-request-agency-information-collection>.

¹⁶ See FR-7006-N-15 60- Day Notice of Proposed Information Collection: Comment Request: Agency Information Collection Activities: Public Housing Annual Contributions Contract for Capital and Operating Grant Funds” available at <https://www.regulations.gov/document?D=HUD-2018-0103-0001>.

¹⁷ Comment by Paul Dellinger, Executive Director, Cleveland Housing Authority, available at <https://www.regulations.gov/document?D=HUD-2018-0103-0063>.

¹⁸ There is no shortage of examples of fraud and abuse by PHA employees exposed by state and local investigators. An audit by the Tennessee Comptroller’s office last year found that an employee at the Oliver Springs Housing Authority used HUD funding to “buy ‘items such as a Carnival Cruise and plane tickets, jewelry, sporting goods, clothes, a Comcast bill, insurance, food, [and] a prom dress.’” See Jamie Satterfield, “Audit: Oliver Springs housing board asleep at the wheel while staffer steals” *Knoxville News Sentinel* (January 17, 2019), available at <https://www.knoxnews.com/story/news/crime/2019/01/17/oliver-springs-housing-board-melissa-may-fraud/2586472002/>; In January, 2019, a report completed by the City of New York Department of Investigation detailed how the manager at one New York City housing development “directed crews to throw away everything [used in a renovation of the property’s grounds]...including...equipment that was in working condition, such as leaf blowers, weed whackers, snow blowers, lawn mowers, drills, saws, and brand-new pallets of sand...[The manager] then ordered all new equipment. Also during this time period, [the manager] ordered nine black leather executive chairs, three 43” flat screen TV’s, file cabinets, and a conference table, for a cost of almost \$4,000.” See New York City Council Committees on Oversight and Investigations and Public Housing, “Testimony of Margaret Garnett, Commissioner, New York City Department of Investigation, Concerning the Examination of the DOI Reports on NYCHA Mismanagement at Throggs Neck Houses” (March 14, 2019), p. 16, available at https://www1.nyc.gov/assets/doi/press-releases/2019/Mar/ThroggsNeck_TestimonyandLetters_31419.pdf.

3. Does HUD plan to make other regulatory changes and/or issue new guidance in conjunction with its introduction of a new ACC? If so, how will these changes be timed with the introduction of the new ACC? Please describe all planned changes.
4. Under the provisions of the new ACC, will asset management fees received by PHAs be considered by HUD to retain their federal designation? Please supply results of any internal analysis of this question and all related documentation.

If asset management fees will be considered to retain their federal designation under the new ACC:

- a. Does HUD plan to conduct additional oversight of PHA COCC finances? Please describe any additional oversight plans or projects.
- b. What categories and types of expenditures by PHA COCC's will be allowed and/or disallowed by HUD?

If asset management fees will not be considered to retain their federal designation, does HUD plan to undertake additional measures to re-federalize fees? If not, why not?

5. Please produce all PHA executive compensation data collected by HUD beginning in January 2017 to the present.

Should you have questions, please contact Daniel Parker of my Committee staff at 202-224-4515.

Sincerely,



Charles E. Grassley
Chairman
Senate Finance Committee

cc: Hon. Ron Wyden, Ranking Member, Senate Finance Committee

Hon. Susan Collins, Chairman, Subcommittee on Transportation, Housing, and Urban Development, and Related Agencies, Senate Committee on Appropriations

Hon. Jack Reed, Ranking Member, Subcommittee on Transportation, Housing, and Urban Development, and Related Agencies, Senate Committee on Appropriations

Hon. David Perdue, Chairman, Subcommittee on Housing, Transportation, and Community Development, Senate Committee on Banking, Housing, and Urban Affairs

Hon. Robert Menendez, Ranking Member, Subcommittee on Housing, Transportation, and Community Development, Senate Committee on Banking, Housing, and Urban Affairs