EXPLORING ALLEGED ETHICAL AND LEGAL VIOLATIONS AT THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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WEDNESDAY, FEBRUARY 4, 2015

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

EXPLORING ALLEGED ETHICAL AND LEGAL VIOLATIONS AT THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Wednesday, February 4, 2015

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2167, Rayburn House Office Building, Hon. Sean Duffy [chairman of the subcommittee] presiding.

Members present: Representatives Duffy, Fitzpatrick, McHenry, Hurt, Fincher, Mulvaney, Hultgren, Tipton, Poliquin, Hill; Green, Cleaver, Delaney, Sinema, Beatty, Vargas, Ellison, Heck, and Capuano.

Chairman DUFFY. The Subcommittee on Oversight and Investigations will come to order. The title of today's subcommittee hearing is, "Exploring Alleged Ethical and Legal Violations at the U.S. Department of Housing and Urban Development."

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time.

The Chair now recognizes himself for 3 minutes for an opening statement. I first want to thank everyone for being here today, including our witnesses.

Our witnesses are here to discuss two reports. The first is the Inspector General's report on allegations of improper lobbying and obstruction at the Department of Housing and Urban Development.

For those returning members to the committee, you will remember that we first discussed this report almost a year ago, in February, when Mr. Montoya was here. At that time, Mr. Montoya and I talked about the whitewash mentality at HUD. At the time, I found those revelations troubling, but I hoped that we could chalk it up to just a few bad apples at HUD.

But we are back here again today to discuss what happened with those bad apples because of other completely unrelated allegations that have surfaced. In fact, I think we are going to hear many stories of the waste, fraud, and abuse that is now taking place at HUD.

The second report our witnesses have been asked to discuss concerns the questionable hiring practices at the Department that might have created a glaring conflict of interest. And that is within

the Office of Public and Indian Housing. I want to make clear to committee members that these are very different allegations against different employees in different departments and divisions responsible for very different tasks.

But they seem to display the same cavalier attitude that shows these employees do not believe in following the rules. And they do not care about getting caught, and when they are caught they don't care about obstructing an investigation or Congress. Their purpose is to protect themselves and each other. And sadly, what we find is that they get away with it. And sometimes, they even get rewarded during periods of bad behavior. It is an attitude that I think Americans are learning is prevalent throughout this Administration and it is an attitude of which we are all quickly getting very tired.

I want to make clear that we are not here to debate the importance of HUD, the importance of its mission, or the work that they do. Millions of Americans who have fallen on hard times—veterans, single mothers, their children—all rely on HUD's programs, and we should all recognize and applaud their efforts.

In fact, it is because of the hard work of many HUD employees that we are here today. It is because they are the ones who have come forward and reported these allegations. They already work with limited resources that should not be diverted to illegal lobbying efforts or overpaying a lobbyist.

So I look forward to hearing from our witnesses today to learn what sort of reprimands HUD has taken against these employees and what steps they continue to take to ensure that this attitude of disregard for accountability does not entrench itself within the Department permanently. And I hope my friends on the other side of the aisle will work with me in this committee to get to the bottom of these allegations and ensure that these bad acts stop now.

And with that, I yield to my good friend, the ranking member of our Oversight and Investigations Subcommittee, Representative Green from Texas.

Mr. GREEN. Thank you, Mr. Chairman. Let me acknowledge that this is your first hearing as the official Chair. While you have occupied the seat before, this is your first time as Chair, and I commend you and want to thank you for the conversations that you and I have had prior to this hearing. While they were personal to us, I will indicate that they have been positive and productive. Again, I thank you.

I would also like to thank our staffs for the outstanding jobs that they have done in preparing us for today's hearing. I sincerely believe that without the staffs' aid and assistance, we would not be nearly as effective as we are. So again, thank you staff.

Mr. Chairman, I am pleased that we are taking an interest in how to improve the Federal agency principally responsible for providing housing to low-income Americans. Today's hearing will cover HUD Inspector General (IG) investigations into alleged wrongdoing at the U.S. Department of Housing and Urban Development.

The first report concerns lobbying actions taken by HUD that this subcommittee held a hearing on nearly a year ago. The IG's report for this incident concluded that HUD had not violated the Anti-Lobbying Act. However, individuals at HUD had violated

HUD's internal policies related to lobbying Congress on pending legislation.

HUD has since taken action to clarify lobbying rules for its employees and acted to respond to the concerns raised during last year's hearing. More recently, the U.S. Government Accountability Office (GAO) determined that the actions taken by individuals at HUD violated the Antideficiency Act related to the proper use of appropriated funds. As such, I fully expect HUD to comply appropriately and to take the necessary actions to address this.

The other topic of today's hearing is related to an IG investigation into alleged improper activities of an individual at HUD brought on through an agreement permitted under the Intergovernmental Personnel Act.

While these agreements are designed to provide Federal agencies the ability to employ subject matter experts on a temporary basis, I believe it is our responsibility to ensure that it is being done properly. The HUD IG investigation raises a number of concerns about the actions taken by individuals at HUD and whether there was proper consideration given to potential conflicts of interest. I want to be clear, perspicuously so, Mr. Chairman. I believe, as do you, that it is our subcommittee's responsibility to fully investigate what has occurred at HUD. And if wrongdoing is uncovered, it should be dealt with appropriately.

However, like you, Mr. Chairman, I contend that this subcommittee's ultimate goal must be improving HUD. HUD's mission is critical to the success of this Nation. By and large, HUD continues to provide support for affordable housing for millions of Americans, including over 14,000 veterans. And 56 percent of HUD's tenants supported by HUD are elderly or disabled.

HUD currently employs over 9,000 people around the United States. While it would appear that the IG's findings suggest that former HUD employees may have acted improperly, we should not conclude that their actions suggest a larger, more systemic problem at HUD.

I will reiterate that HUD should act appropriately, and it appears that HUD is addressing concerns raised by the IG. One of the things that I will introduce into evidence at some point, Mr. Chairman, is a joint communique signed by the Secretary of HUD and the IG indicating a willingness to work together to bring resolution to the concerns that have been raised. We should not allow this debate to metamorphose into anything more than trying to improve HUD.

Mr. Chairman, I agree with you. And, in fact, it is my hope that once the agency has addressed our concerns, this subcommittee will turn its attention to more pressing national matters, including the struggles of our country's smallest banks and the state of our public housing in America.

Mr. Chairman, nearly every member of this committee has heard from small banks about the struggles that they are facing in balancing their consumer protections with the regulatory burdens with which they struggle. Over 6,000 of our Nation's banks, which is more than 90 percent of all banks in this country, are under $1 billion in assets. And I believe that we must do more to help them

lest we wish to stand idly by as the industry continues to consolidate.

While I look forward to this hearing and hearing from our witnesses, Mr. Chairman, I do want to work to improve HUD, and I am eager to tackle the many other issues that demand our attention.

I yield back.

Chairman DUFFY. The Chair now recognizes the vice chairman of our Oversight and Investigations Subcommittee, Mr. Fitzpatrick from Pennsylvania, for 2 minutes.

Mr. FITZPATRICK. I thank the chairman for holding this important hearing.

Today, this subcommittee is going to hear testimony from yet another Federal agency about an investigation into improper behavior. This week, it is the United States Department of Housing and Urban Development, whose own Inspector General found evidence that senior employees may have circumvented the hiring process to appoint politically connected lobbyists to high-level positions.

Furthermore, this subcommittee will be following up on the Government Accountability Office and HUD OIG reports that officials violated Federal law by asking employees to contact United States Senators to ask for their support on pending legislation.

Last Congress, it was the IRS, the Department of Justice, and most tragically, the Veterans Administration. In every case, the American people saw high-ranking officials within these agencies destroy evidence, skirt the law for their own benefit, and adhere to a personal agenda. Over the course of the testimony, I hope this committee is able to determine if this type of behavior is an isolated incident of just a few bad actors, or if it stretches across the entire senior leadership. But what concerns me more is that my constituents have come to expect this type of behavior from the Administration.

Finally, this is not a hearing about the good work HUD does for struggling families across the United States, including in my district back home in Pennsylvania. And for the great number of HUD employees who work hard and who serve, I thank them for that.

In fact, this is a hearing about behavior that has occurred at previously-mentioned Federal agencies which tarnishes the good work that many Federal employees, including those at HUD, are doing for the taxpayers. So, Mr. Chairman, I look forward to the important work of this subcommittee in the 114th Congress to hold accountable Federal agencies and Federal employees.

And I yield back.

Chairman DUFFY. The vice chairman yields back.

The subcommittee now welcomes our witnesses. Thank you both for being here today.

First, we welcome the Honorable David Montoya. He is the Inspector General of the United States Department of Housing and Urban Development. Before Mr. Montoya was sworn in as HUD's Inspector General in December 2011, he served in senior-level positions for the Office of the Inspector General at the U.S. Postal Service and the U.S. Department of the Interior, and as the Deputy Director of the EPA's Criminal Investigation Division. Mr. Montoya

is a native of El Paso, Texas, and a graduate of the University of Texas at El Paso.

We also welcome Ms. Edda Perez. She is the Managing Associate General Counsel in the Office of General Counsel at the United States Government Accountability Office. Ms. Perez serves as Associate General Counsel for appropriations law, budget issues and financial management, and assurance teams within GAO's Office of General Counsel, and she has been with the GAO in several different capacities since 1987. Ms. Perez received her law degree from Georgetown University and her undergraduate degree from InterAmerican University of Puerto Rico.

The witnesses will be recognized for 5 minutes to give an oral presentation of their testimony. Without objection, the witnesses' written testimony will be made a part of the record. Once the witnesses have finished presenting their testimony, each member of the subcommittee will have 5 minutes in which to ask questions of the witnesses.

I want to remind the witnesses verbally that while you may not be placed under oath today, your testimony is subject to 18 U.S.C. Section 1001, which makes it a crime to knowingly give false statements in proceedings such as this one. You are specifically advised that knowingly providing false statements to this subcommittee or knowingly concealing material information from this subcommittee is a crime.

On your table, you will see that you have three lights: green means go; yellow means you are running out of time; and red means stop. The microphones are oftentimes very sensitive, so make sure you are speaking directly into it.

And with that, Mr. Montoya, you are recognized for 5 minutes.

STATEMENT OF THE HONORABLE DAVID A. MONTOYA, INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. MONTOYA. Thank you, Chairman Duffy, Ranking Member Green, and members of the subcommittee. I am David Montoya, the Inspector General of the Department of Housing and Urban Development. I want to thank you for the opportunity to testify today regarding our investigative and audit work of legal and ethical issues at the Department, including lobbying activities, its improper use of agreements under the Intergovernmental Personnel Act, and other investigations of HUD employees' misconduct. My written testimony outlines a number of our concerns.

While we are encouraged by the positive involvement of Secretary Castro and Deputy Secretary Coloretti, our work does continue. On February 26th of last year, I testified before this subcommittee regarding our investigation of HUD lobbying activities. I recounted the series of events and lapses in judgment that resulted in HUD engaging in grassroots lobbying activities.

While our investigation did not result in criminal prosecution, it demonstrated an institutional failure to follow HUD's own existing internal policies. This led to placing the Department and its second highest-ranking official, the former Deputy Secretary, into a comprising situation, one that leaves an impression of lapses in judgment and unethical decision-making by high-ranking officials.

In that matter, officials attempted to impede our investigation by withholding information and threatening my investigating agents. In response to our report of investigation, HUD took no formal disciplinary action.

I am here today to state that unfortunately, we have encountered another example of senior officials bending the rules and engaging in what I consider misconduct. Over the last 5 months, we have issued two reports concerning HUD's appointment of the Deputy Director of the Council of Large Public Housing Authorities, known as CLPHA, to HUD's Office of Public and Indian Housing's (PIH's) policymaking division that was responsible for developing the regulations applicable to the entities CLPHA represents.

In essence, HUD appointed someone who represented the regulated to be in charge of developing the regulations. We believe the former Assistant Secretary and former Deputy General Assistant Secretary for PIH may have committed prohibitive personnel practices and created an inherent conflict of interest in doing so. More troubling is that once inside HUD, CLPHA's Deputy Director attempted to deregulate public housing agency reporting requirements and loosen oversight of public—or PIH programs to align with the agenda set forth by CLPHA and other similar industry groups.

These two events alone illustrate what can happen when senior officials veer from the course of ethical decision-making, skirt the edges, and act in a manner that is not in the government's best interest.

The inappropriate and sometimes illegal actions by a small group of HUD employees detract from what my experience has shown me to be the norm, which is that the vast majority of HUD employees are hard-working, dedicated civil servants. In fact, many of these cases have come to us by conscientious employees who are frustrated that their managers have not addressed these issues and allegations.

In some of these cases, we see a failure to adhere to existing policies and procedures, or we see a breakdown in responsibility. Particularly troubling to me is when information is withheld from my office or employees demonstrate a lack of candor with, or even threaten, OIG agents and yet HUD takes no action.

It is a fact that poor actions and behavior are human in nature and will occur throughout any industry or entity, private or government. HUD is not alone. But what I believe is important is what an organization does after such behavior is detected to discipline, and create an ethical culture in the workplace. It is my opinion that HUD has failed in both.

One cannot ignore the fact that for the past several years HUD has consistently ranked near the bottom in annual surveys of the most desirable Federal agency to work for. Misconduct and unethical behavior, particularly by high-ranking officials, does not, in my view, serve to enhance this unfavorable image. Employee morale also suffers when employees observe that misconduct is not dealt with and the offending employees are allowed to remain in their positions virtually unpunished.

It is in HUD's best interest that they address misconduct. Because according to a 2013 national business ethics survey con-

ducted by the Ethics Resource Center, when employees observe misconduct on the job, their engagement drops by nearly 30 percent.

I do want to express my appreciation for Secretary Castro's effort to encourage HUD employees to cooperate with my office. Indeed, he issued a jointly-signed letter with me to all HUD employees outlining his expectations. I look forward to working with the Department and the Congress to ensure that HUD programs and personnel operate in a legal and ethical manner.

Thank you for the opportunity to speak today, and I am happy to answer your questions.

[The prepared statement of Inspector General Montoya can be found on page 36 of the appendix.]

Chairman DUFFY. Thank you, Mr. Montoya.

The Chair now recognizes Ms. Perez for 5 minutes.

STATEMENT OF EDDA EMMANUELLI PEREZ, MANAGING ASSOCIATE GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Ms. PEREZ. Good morning, Chairman Duffy, Vice Chairman Fitzpatrick, Ranking Member Green, and members of the subcommittee. Thank you for the opportunity to discuss our legal opinion concerning the Department of Housing and Urban Development's use of appropriations to prepare and transmit an email to the public.

GAO concluded that HUD violated the anti-lobbying provision of its Appropriations Act and the Antideficiency Act. The legal opinion was requested by this subcommittee's previous chairman. Representative McHenry asked GAO whether HUD violated anti-lobbying provisions when the Deputy Secretary prepared and transmitted an email on July 31, 2013.

That email encouraged recipients to contact specific Senators regarding pending legislation. We relied upon facts determined from the investigation done by HUD's Office of Inspector General and information that HUD provided to the subcommittee. We also asked HUD to provide us with additional facts and its legal views. HUD did not provide any additional facts or legal views to GAO.

The provision applicable in this case is Section 716 of HUD's 2012 Appropriations Act, which was carried forward by the 2013 Appropriations Act. Section 716 is commonly referred to as an anti-lobbying provision. It prohibits the use of appropriated funds for indirect or grassroots lobbying in support of or in opposition to pending legislation.

Grassroots lobbying occurs when an agency makes clear appeals to the public to contact Members of Congress regarding pending legislation. The email transmitted by the Deputy Secretary requested that recipients contact 17 named Senators in support of the Senate's version of HUD's 2014 appropriations bill, which was pending in the Senate at that time. The email emphatically urged recipients to encourage the Senators to take various actions: to vote in favor of procedural motions to advance consideration of the bill; to oppose specific amendments HUD considered harmful to the bill; and to vote in support of the bill itself.

Among the over 1,000 recipients of the Deputy Secretary's email were members of the public. GAO concluded that HUD violated Section 716 by preparing and transmitting the email. The provision is violated when there is evidence of a clear appeal by an agency to the public to contact Members of Congress in support of or in opposition to pending legislation.

Here, the Deputy Secretary's email, on its face, made several clear appeals to the public to contact Members of Congress regarding HUD's pending appropriations bill. HUD did not deny that it engaged in grassroots lobbying. Rather, HUD emphasized that the email was sent by its Deputy Secretary, who is a Presidentially-appointed and Senate-confirmed official.

HUD noted that the Department of Justice has opined that a similar anti-lobbying provision which is enforced by Justice does not restrict the activities of certain Executive Branch officials such as Presidential appointees. Notably, however, in interpreting that provision in Section 1913 of Title 18, Justice does caution against such officials engaging in the sort of lobbying activity that section was intended to prevent.

GAO's opinion did not analyze whether HUD violated Section 1913, a provision enforced by the Department of Justice, not GAO. GAO analyzed HUD's compliance with the appropriations provision found in Section 716.

GAO does not agree with HUD's view that the Deputy Secretary is exempt from the appropriations provision. Section 716 would not prevent the Deputy Secretary from engaging in normal executive legislative relationships. It does however establish a brightline rule prohibiting a clear agency appeal to the public to contact Members of Congress in support of or in opposition to pending legislation. And in this case, there is evidence of such an appeal to the public, and GAO concluded that HUD violated the anti-lobbying restriction of Section 716. By using its appropriated funds in violation of this prohibition, HUD also violated the Antideficiency Act.

The Antideficiency Act is a cornerstone of fiscal laws by which Congress enforces its constitutional power of the purse. It is also a funds-control statute that is designed to implement agency fiscal discipline.

Under the Act, officials of the government may not make or authorize an obligation or expenditure exceeding the amounts of available appropriation. In other words, agencies may not spend more than Congress provides. The legal effect of Section 716 is to make no funds—that is, zero—available to HUD for indirect or grassroots lobbying. By using funds to prepare and transmit the email in question, HUD spent funds in excess of the amount available. And because no funds were available for grassroots lobbying, HUD violated the Antideficiency Act.

Consequently, HUD must report an Antideficiency Act violation to the President and Congress, and transmit copies of the report to GAO in accordance with the law. As of this date, GAO has not received a report from HUD for this Antideficiency Act violation. Thank you, Chairman Duffy, Vice Chairman Fitzpatrick, and Ranking Member Green.

This concludes my statement, and I would be pleased to answer any questions you may have.

[The prepared statement of Ms. Perez can be found on page 48 of the appendix.]

Chairman DUFFY. Thank you, Ms. Perez.

The Chair now recognizes himself for 5 minutes. Mr. Montoya, maybe just a brief recap. After last year's hearing, after the information came to light with regard to the lobbying effort within HUD, what happened to Mr. Jones, Mr. Mincberg, and Mr. Constantine in regard to disciplinary action, and where are they today?

Mr. MONTOYA. Thank you for that question, Mr. Chairman. Mr. Mincberg has left the organization. Nothing—no personnel action, if you will, took place against him prior to his leaving, but he has left the organization.

Chairman DUFFY. So he wasn't removed for his actions? He left on his own volition?

Mr. MONTOYA. Left on his own. He resigned, yes, sir. With regards to the Deputy Secretary, he left and took another position with the State. Nothing happened with him, although our investigation did not suggest that he had any real direct involvement in the email, and may have been unknown with regards to the email contact list.

Chairman DUFFY. Is it fair to say Mr. Jones was, in your opinion, relying on the advice given to him by others?

Mr. MONTOYA. Yes, sir. I think last time I testified, I classified it as "ill-advised." He was ill-advised by his attorneys who should have kept him from this situation.

Chairman DUFFY. Okay.

Mr. MONTOYA. And with regards to Mr. Constantine, I believe he may have been issued a reprimand or an oral counseling, which we would not consider a personnel action—oral counseling.

Chairman DUFFY. But he has been removed from HUD, yes?

Mr. MONTOYA. No, no.

Chairman DUFFY. No?

Mr. MONTOYA. He is still the ethics official for HUD.

Chairman DUFFY. He is the ethics official for HUD?

Mr. MONTOYA. Yes, sir.

Chairman DUFFY. Was Mr. Constantine misguided, do you think, like Mr. Jones?

Mr. MONTOYA. The evidence suggested that Mr. Mincberg had several conversations within his hallway about this more aggressive lobbying. I did fault Mr. Constantine for not taking more of an aggressive approach himself in asking the question, what is it you are talking about? Especially because it dealt with the Secretary and the Deputy Secretary.

Chairman DUFFY. Did Mr. Constantine cooperate with your investigation?

Mr. MONTOYA. We had to interview him 3 times. So to the extent that he was willing to be interviewed—

Chairman DUFFY. Is that standard practice that you would interview someone 3 times? Or usually, if someone is cooperative, does it take only one time?

Mr. MONTOYA. It is not unheard of that we interview somebody several times if we need to go back for additional information. In his case we, quite frankly, didn't feel that the story was straight. So that is why we interviewed him 3 times.

Chairman DUFFY. Do you think he was fully forthright with you in the first interviews that you did with him?

Mr. MONTOYA. No. And quite frankly, although he didn't say it, I believe he was a little fearful of retaliation of speaking up.

Chairman DUFFY. But he has not been removed. He is in the Ethics Division.

Mr. MONTOYA. That is correct, sir.

Chairman DUFFY. Okay. Has there been any promotion or increase in pay?

Mr. MONTOYA. I am not aware that there would be for him.

Chairman DUFFY. Okay. I want to switch gears and go to the more recent investigation with regard to Ms. Gross being hired by HUD. Listen, it is not uncommon, and I think many Americans might not like this, but sometimes lobbyists will come to work for the government and sometimes government employees will leave and go work for lobby firms. It is referred to as the "revolving door." That is not uncommon, or that is not illegal, is it? No.

Mr. MONTOYA. No. It would depend on the circumstances.

Chairman DUFFY. But with Ms. Gross, however, she was brought into HUD in her governmental personnel agreement. Did she resign her position from CLPHA?

Mr. MONTOYA. No, she did not. She maintained her position as the Deputy Director and was, quite frankly, being paid by CLPHA with HUD reimbursing payments. So in essence, she was still a full-fledged paid employee of CLPHA while employed in Federal service.

Chairman DUFFY. In these IPA agreements between agencies and outside organizations, is that uncommon that they would keep their position at the outside organization?

Mr. MONTOYA. I don't believe it is uncommon. I think what was uncommon here is, she was put in a very key, high-ranking role—she wasn't there as an advisor, per se—to sort of inform HUD of what the industry was dealing with when it came to regulations. There is nothing wrong with that sort of advisory role, but she was in a key, policymaking position.

Chairman DUFFY. And that is where the difference is, that she was not there in an advisory role, which is the traditional position of an IPA individual. Instead, she was in a policy-making position and still kept her position the CLPHA, which is a lobbying organization and has a certain view and perspective of what HUD should be doing with regard to reforms. Is that correct?

Mr. MONTOYA. Yes, sir, that is correct.

Chairman DUFFY. Do you have an opinion as to whether—was she loyal to HUD, was she loyal to CLPHA, was she loyal to herself? How did she navigate her role in HUD?

Mr. MONTOYA. Quite frankly, everything suggests to me and to us that she was loyal to CLPHA and to the industry, not only with regards to the fact that she wanted to maintain the higher salary that CLPHA was giving her as opposed to the salary she would have made as a Federal employee, but quite frankly, in trying to deregulate some of the regulations that had established HUD in a better position, especially with regards to improper payments.

Chairman DUFFY. Thank you. And my time has expired.

The Chair now recognizes the ranking member, Mr. Green from Texas, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Thank you again to the witnesses.

Let me start with you, Ms. Perez. And thank you for appearing today. With reference to the report that you are to receive from HUD and that Congress is to receive as well, you have indicated that you have not received it. But would you go on and indicate at this time that this is not unusual given the length of time that has lapsed? And that sometimes it can take months to get these reports to the appropriate parties?

Ms. PEREZ. Yes, sir, it can take several months for us to get reports from agencies when we have indicated that they have violated the Antideficiency Act. Some agencies have done it in a matter of weeks, others have taken several months and even years.

Mr. GREEN. And just for the record, to make it very clear, you are not contending that anything untoward has occurred by virtue of the report not having reached your office to date.

Ms. PEREZ. No, sir. The main concern and purpose of that report would be for the agency to be able to identify what actions it has taken to correct these violations, as well as to take actions to prevent violations in the future. So we really view it as forward-looking because that is part of what the statute requires, to impose additional safeguards.

Mr. GREEN. Thank you. And with reference to the anti-lobbying, you do concede that if the wording in that letter had been appropriate to indicate that the Administration opposes a certain piece of legislation, or this is the Administration's position on a piece of legislation, that it would have been perfectly appropriate and would not have been a breach. Is that a fair statement?

Ms. PEREZ. Yes, sir. What our case law recognizes is that it is fine for agencies and Administrations to make their views known to the public, including their views on pending legislation. But—

Mr. GREEN. Thank you. I am going to have to intercede for just a moment and move to Mr. Montoya because there are a couple of things I have to get into with him.

Ms. PEREZ. Sure.

Mr. GREEN. Sir, thank you. It appears that two Texans have joined together to issue a joint communique, you and the Secretary. And I would like to ask a couple of questions about this. Is that something that is commonplace for a Secretary, to sign a communique with an IG?

Mr. MONTOYA. No, sir. I have to say no, and I am not sure I know of any other situation like this.

Mr. GREEN. And if you had to characterize it as either unique or commonplace, you would lean more toward unique than commonplace, would you not?

Mr. MONTOYA. Yes, sir, I would agree with that.

Mr. GREEN. And in this communique, you indicate that you are working together to eliminate waste and mismanagement. And you go on to indicate that you believe that you can prevent these inefficiencies and that we can work together to make HUD a more effective and efficient organization. Is that a fair statement?

Mr. MONTOYA. Yes, sir. That, in fact, is the mission of the IG.

Mr. GREEN. And have you found the new Director, Director Castro, to be someone that you can work with to date? And do you find him moving in the right direction?

Mr. MONTOYA. With my initial conversations, and the fact that he would sign this joint letter in response to many of the concerns that I have raised, or the subject of this testimony, yes, I am encouraged by that. And I look forward to him making those changes.

Mr. GREEN. The organization itself, HUD, you have indicated that the infractions should not be perceived as pervasive, that these are things that occur in large organizations the size of HUD—9,000-plus employees—and you have been very clear on this. But I think for the record it is important to reiterate this. Is this true?

Mr. MONTOYA. Yes, sir, that is correct.

Mr. GREEN. And it is also true that what has been done is something that is correctable with a reasonable amount of effort and time. And you are eager to work with the new Secretary to make these corrections.

Mr. MONTOYA. Yes, sir, and that is key, what an organization will do when it comes across misconduct.

Mr. GREEN. Yes, sir. And you agree that the new Secretary, given his initial expression to you, should be given an opportunity to make the necessary corrections so that we can move forward with HUD.

Mr. MONTOYA. Yes, sir, absolutely.

Mr. GREEN. And finally this. The people who have been involved in these infractions, for the most part, are all no longer with HUD. I do understand that they left under circumstances that are sometimes questionable in the minds of some, but they are no longer there. Is that a fair statement?

Mr. MONTOYA. It depends on which example of which we are speaking. There are a fair amount who are still there.

Mr. GREEN. Yes, but the—Mr. Jones is no longer there.

Mr. MONTOYA. No, sir, he is no longer there.

Mr. GREEN. Ms. Gross is no longer there.

Mr. MONTOYA. That is correct; she is no longer there.

Mr. GREEN. So for the most part, we can say that HUD has been—whether they have left, and that is a good thing, their leaving.

Mr. MONTOYA. I would say—well, I don't know about Deputy Secretary Jones. I actually thought he was trying to do a lot to change the culture with regard to some of this conduct. With regards to Ms. Gross, yes, it is a good thing she has left.

Mr. GREEN. Okay. And HUD is putting those behind them—

Chairman DUFFY. The gentleman's time has expired.

Mr. GREEN. Thank you very much, Mr. Chairman.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the former chairman of this subcommittee. And we appreciate all the good work he has done on the subcommittee as chairman and the good work he has done on this issue. He is also the Majority Deputy Whip and the vice chairman of the full Financial Services Committee. The Chair now recognizes Mr. McHenry from North Carolina for 5 minutes.

Mr. MCHENRY. I thank my friend from Wisconsin. And I hope you will enjoy the same working relationship I had with the ranking member during my time. And congratulations on your new chairmanship, Sean. We are happy you have taken over, and I am sure the staff is much happier to work with you.

So, Mr. Montoya, thank you for being here, and Ms. Perez, thank you for being here, as well. I appreciate the work that you all do on a daily basis for the taxpayers and for the American people. It is important work.

Mr. Montoya, in your report you outline several other cases of employee misconduct in the Department of Housing and Urban Development. In your opinion, were the administrative remedies that the Department put in place sufficient?

Mr. MONTOYA. No, sir, I don't believe they are. And quite frankly, when they do issue some personnel action it seems to amount mostly to counseling sessions, verbal oral counseling. Which, quite frankly, don't amount to penalties even under their own code of conduct. A minimum penalty would be a reprimand, and that is in written form that generally stays in an employee's personnel file for 2 years. So when HUD tells us that they have handled it and they have issued corrective action, oral counseling to us does not—

Mr. MCHENRY. So, why? Why does that matter?

Mr. MONTOYA. I think, again, that is what I said earlier. I think in order to establish that ethical culture in a workplace your have to discipline as appropriate when the circumstances arise. And I think in many of the examples we give you, it would suggest that there should have been a stronger reprimand or at least a stronger way of addressing—

Mr. MCHENRY. So you work with the Department of Justice on these investigations, and you turn over—you have criminal referrals, at times, you turn over to the Department of Justice. Have they prosecuted in these cases?

Mr. MONTOYA. No. And often, they will defer to us and to the Department because they feel that the administrative actions available to the Department are sufficient enough to address the issue, some of these being, obviously, reprimand up to removal—

Mr. MCHENRY. So HUD—most HUD employees are in the union. Is that correct?

Mr. MONTOYA. That is correct, sir.

Mr. MCHENRY. Okay. So how has the union involvement been in terms of taking action against people who have done wrong—broken the law, broken ethical standards? Have they helped?

Mr. MONTOYA. No. Quite frankly, I think the union will come to the aid of the employee irrespective of what he has done. In one of the examples I gave, with a gentleman who was running a business for over 6 years in the Department—working 2 to 3 hours a day on that business, by his own testimony—I think the initial recommendation was to remove him. And it was the union who helped retain him for—retain him by only having to suffer through a 30-day-without-pay penalty. The problem with that, though, is he was awarded twice in that same year with a monetary award.

And he was promoted, if you will, with regards to his performance rating. He went from an "exceeds," which he had historically been, to an "outstanding" that year.

Mr. MCHENRY. Isn't that a deeper issue when some guy is spending basically 40 percent of his time on a daily basis doing something else, and yet he is given high marks for exceeding his job? Perhaps maybe he should be doing more work or have more responsibility to maybe fill up his day if he can actually spend about half of his time working for the taxpayer but collecting full pay. Isn't that a deeper cultural problem?

Mr. MONTOYA. Yes, sir. In fact, I plan to look into it. As we were preparing for this testimony, it came to our attention that not only he, but another employee who was running a business was also given several monetary performance awards. It is my suspicion that they were given these awards in order to offset the loss in pay. And so I do plan to look into it and ask the question—

Mr. MCHENRY. Sir, look, these are important programs. You have Public and Indian Housing, you had a loan officer who embezzled over $800,000 from the taxpayers—and he was hired despite the fact that—as you outline in your report—he had a 10-year criminal history. First of all, how did he slip through the cracks? And second of all, has he paid us back yet? Has he paid my constituents back and the American taxpayers back for the money he embezzled?

Mr. MONTOYA. I don't believe he has done that yet.

Mr. MCHENRY. But how did he slip through the cracks with a 10-year criminal record?

Mr. MONTOYA. Well, here is the irony. HUD, I believe, knew of that, of some of that. They also had a systemic concern with how they were really looking into employee backgrounds. We actually issued a report on what they did wrong in that particular case—actually, it was in a prior case—and what we thought they could do better.

Mr. MCHENRY. And have they corrected this?

Mr. MONTOYA. When we initially submitted that, what we call a "systemic implication report," it was 5 or 6 months before this gentleman was hired. So they obviously didn't do it in that 5- or 6-month period because then they hired this one with the large criminal history. My staff is actually now going back to ask those questions: whatever happened to that; and did you implement that? I don't have an answer for you now.

Mr. MCHENRY. Thank you.

Thank you, Mr. Chairman.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Minnesota, Mr. Ellison, for 5 minutes.

Mr. ELLISON. Thank you, Mr. Chairman, and Mr. Ranking Member.

Mr. Montoya, do you argue that when someone has worked for a membership association of a public housing agency and has that background, they should be prohibited from serving in leadership at HUD on public housing issues?

Mr. MONTOYA. Well, it depends. Absolutely not if they come in as a full-fledged government employee. They are responding to a vacancy announcement, they are selected. They come in as a full-fledged government employee. I do have a concern when they come

in while still working for those associations. So, it is kind of a dual answer there.

Mr. ELLISON. Yes. You are well aware that there are people who come, do government service, who have been in the private sector but then come work at the FDIC, the OCC, the Consumer Financial Protection Bureau, things like that.

Mr. MONTOYA. Absolutely.

Mr. ELLISON. It happens all the time. And then in the public housing space, would you say it is somehow unique from those other examples I gave?

Mr. MONTOYA. No. And quite frankly, she could have come in as a GS–15 government employee having left CLPHA. But she absolutely could have done that. The irony there is that then she could have tried to deregulate in her government role which, obviously, still would have been a concern for us.

Mr. ELLISON. Thank you. And let me also mention that I just think that it is important—and I wonder if you agree with this—that experts in affordable housing and development and management who work for nonprofits or government should be able to work in public policy positions. As a general principle, it sounds like you agree with that.

Mr. MONTOYA. I do. And I actually don't disagree with the fact that they can come into a Department under an IPA in an advisory role, right? But not in key positions doing what Ms. Gross did.

Mr. ELLISON. Okay. How would you describe how HUD is providing appropriate oversight of the IPA process so that IPA experts are provided with the guidance to meet all the requirements at the beginning of their service rather than later on down the line?

Mr. MONTOYA. Oh, I would say their oversight was poor to nonexistent when these started. It is my understanding now that the Office of General Counsel is actually reviewing every IPA for ethical considerations, these sorts of things. But I am looking at everyone they have—I think they have 16 IPAs so I have launched a review of all 16 to find out if we have any more circumstances like we did with Ms. Gross.

Mr. ELLISON. Okay. Well, I just want to say that I am personally appalled by how poorly Congress has funded public housing. At this time—there has been a study that said that the maintenance budget for public housing—to get public housing back up to snuff at acceptable standards would be upwards of $26 billion. And yet in the last 10, 12 years we haven't come anywhere close to that. I am concerned about that.

You have people with inadequate lighting, elevators that aren't working, mold, all at the same time when low-income people all over this country really need housing. So this is something that continues to be a concern of mine. And, we are going to continue to watch this issue closely.

Mr. MONTOYA. Well, sir, you would be interested to know that one of the sections of the PIH requirements that Deb Gross tried to deregulate was the requirement for quality standard reviews every year. She wanted to push that out to every 2 or 3 years, which would have added more to the very maintenance problems you are talking about. To not require these public housing authorities to look at this every year so that these people have a clean,

safe home is a concern for us. And that is one of those things she tried to change.

Mr. ELLISON. Thanks for your service.

Mr. MONTOYA. Thank you, sir.

Mr. ELLISON. And I will yield back.

Mr. MONTOYA. Thank you, sir.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the vice chairman of the subcommittee, the gentleman from Pennsylvania, Mr. Fitzpatrick, for 5 minutes.

Mr. FITZPATRICK. I thank the chairman. And as I said in my opening statement, this hearing is not about the important work that HUD does, or the need to provide adequate resources to HUD. I think we can all agree that is important. This hearing is about waste, fraud, and abuse within the agency which, hopefully, we all agree we need to get after. And, Mr. Montoya, I want to thank you for what I would describe as your great work within the agency.

Mr. MONTOYA. Thank you, sir.

Mr. FITZPATRICK. The investigations you do—we have met in my office, we have met here in public forums and hearings, and I have always found you to be very direct and very prepared. I want to go back to the issue of the Council for Large Public Housing Agencies. Was this organization ever a registered lobbying organization with the Federal Government, the Council itself?

Mr. MONTOYA. Yes, sir, it was.

Mr. FITZPATRICK. What was the timeframe?

Mr. MONTOYA. I believe they relinquished their registration as a lobbyist in 2009. There was a law change there so I think it was a 2009 timeframe.

Mr. FITZPATRICK. So they were registered Federal lobbyists up until 2009, then they terminated that registration?

Mr. MONTOYA. They did, but they didn't end the practices that they had done as a lobbyist. They continued those. In fact, Ms. Gross and the male employee she hired from CLPHA, both in our interviews, attested to the fact that their roles and responsibilities didn't change. They did the very same thing.

Mr. FITZPATRICK. So you are saying that they either terminated their registration or they let it lapse and didn't renew it. Nevertheless, the individuals within the Council for Large PHAs continued with the same course of conduct. Would that be communicating with HUD and attempting to influence their policy?

Mr. MONTOYA. Yes, sir.

Mr. FITZPATRICK. Would that be acting as a lobbyist without being a federally-registered lobbyist?

Mr. MONTOYA. I am not an attorney, but that would be my impression and interpretation, yes, sir.

Mr. FITZPATRICK. So effectively, you are saying that the Council is continuing to act as a lobbyist today.

Mr. MONTOYA. That would be my opinion, yes, sir.

Mr. FITZPATRICK. Was Ms. Gross herself ever a federally-registered lobbyist?

Mr. MONTOYA. Yes, sir. She was, as well as the male employee that she hired from CLPHA to work directly for her at HUD.

Mr. FITZPATRICK. The President's Executive Order 13490 bars individuals who have been federally-registered lobbyists within the past 2 years from working in Federal agencies in the specific areas in which they lobbied. Is that correct? Is that your understanding of that—

Mr. MONTOYA. Yes, sir, that is correct.

Mr. FITZPATRICK. —Executive Order? If appears as though Ms. Henriquez and Ms. Hernandez violated this Executive Order when they hired Ms. Gross then. Is that correct?

Mr. MONTOYA. Yes, sir, that is my opinion. It is correct.

Mr. FITZPATRICK. Now, Ms. Gross was—how would you describe that relationship? Like a contracted employee? Not a direct employee of HUD, correct?

Mr. MONTOYA. Correct. It is sort of a quasi-contractual type employment.

Mr. FITZPATRICK. Was she qualified to hold that position if she had applied as any American would apply to HUD for a position—as a job description, with requirements and qualifications? If she had applied directly, was she qualified to hold that position?

Mr. MONTOYA. That is a great question, Mr. Fitzpatrick. What I would tell you is that there was a vacancy announcement for that position for which she applied. She originally was disqualified for not having the right criteria. Then she was placed on the list after some finagling, if you will, by the Assistant Secretary. And then ironically, the Assistant Secretary voided the announcement, saying that no one on the list, including Ms. Gross, was qualified. And out of a five-point scale she rated them all as two, right? And then goes and hires her under this IPA agreement at $40,000 more than she would have been making if she had simply become a Federal employee.

Mr. FITZPATRICK. So it would appear to an inquiring independent investigator that something was up here. We would call that a clue.

Mr. MONTOYA. Yes, sir, absolutely.

Mr. FITZPATRICK. On the issue of compensation, as a contracted employee was she actually compensated more than the direct position would have paid?

Mr. MONTOYA. Yes, sir, she was. And she also received salary increases and bonuses during a period of time that Federal Government employees did not.

Mr. FITZPATRICK. As a contracted employee, was she required to file financial disclosures with the Federal Government?

Mr. MONTOYA. Under the IPA agreement, we believe yes, that she was required to.

Mr. FITZPATRICK. And did she do that?

Mr. MONTOYA. She did not. HUD doesn't feel that she should have.

Mr. FITZPATRICK. So you are saying that HUD hired a position for Deputy Assistant Secretary—

Mr. MONTOYA. Yes, sir.

Mr. FITZPATRICK. —hired a person who wasn't qualified, paid her more than the position otherwise would have paid, and then she failed to file financial disclosure forms. Was anybody disciplined within the organization for this course of conduct?

Mr. MONTOYA. No. In fact, the Office of General Counsel parsed words and definitions with us over whether she should or shouldn't have filed a financial disclosure form because of her—but it is my belief that because of her position and the sheer salary alone she should have.

Mr. FITZPATRICK. My time is up.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Maryland, Mr. Delaney, for 5 minutes.

Mr. DELANEY. Thank you, Mr. Chairman. And I want to thank the witnesses for their testimony, which is obviously very concerning. It is concerning on an absolute basis in terms of actually what happened and what you are reporting. But it is also concerning because, like most of my colleagues, I believe HUD does extraordinarily important work. And as my friend from Pennsylvania had pointed out, this is not a hearing about HUD. But HUD does do extraordinarily important work. And the overwhelming majority of the employees at HUD are dedicated public servants working hard in an honest and ethical manner for the good of the taxpayers.

But this kind of situation tends to put them and the whole organization in a negative light, which is unfortunate for the taxpayers, for the organization, and for the people. And so when thinking about—kind of lifting up a little bit and thinking about some of your observations about things in terms of how they are run at HUD and how these things can happen, and just thinking about my own experience in the private sector running a public company that was subject to lots of regulations and lots of compliance, we kind of had four pillars that we tried to build upon in terms of making sure we had an organization that ran to the highest standards of ethical and compliance behavior.

The first was making sure we had really good training so that people understood what the rules are. Second, we made sure we had the infrastructure in place for ongoing monitoring and compliance. Third, we made sure we had a culture of accountability so if people actually broke the rules there were real consequences and people saw that there were consequences. And then finally, it was really important to set the right tone at the top. In other words, making sure that senior management, when they are talking about mission and execution, they are also talking about culture and behavior. And I was pleased about the joint letter that you sent with the Secretary, and I think the Secretary is doing a terrific job at the organization and is really bringing fresh energy in general.

But I am interested, Mr. Montoya, in your observations on how HUD operates as it relates against those four—at least in my words—pillars: training; compliance infrastructure; a culture of accountability; and setting the right tone at the top that actually this stuff is really important.

Mr. MONTOYA. Thank you for the question, sir. And I will tell you, it is music to my ears. Because what you are really talking about is building an ethical culture in an organization. Unfortunately, the government, unlike the private sector, doesn't always do such a great job at that. And I would agree with you, a lot of it has to do with the tone at the top, the very beginning. And I be-

lieve that is why the Secretary signed that joint letter and why I am so encouraged.

Certainly, the supervisory enforcement—that their ethical conduct is beyond reproach, and the training to be better supervisors when it comes to dealing with misconduct. And then, of course, you need the peer commitment, where you have individuals supporting each other to come forward. And we see a lot of that in these cases that we have where they are coming forward on this.

It is hard for me to put a finger on exactly what the culture is or what the attitude is, except to say that I think when nothing is done, nothing substantive is done with misconduct, people sort of lose their oomph, their desire to really do anything.

Mr. DELANEY. It is disrespectful to them in a way, right?

Mr. MONTOYA. Yes, it is.

Mr. DELANEY. Because they are doing their job, correct?

Mr. MONTOYA. And again, the government does not do a good job of this. I would agree that every government organization should publicize, maybe not using the names, but publicize it. "Unfortunately, we had an employee who did this. This is the penalty they received." So that everybody knows that, one, they take this stuff seriously; and two, there are consequences for misconduct. And then what that misconduct was. It goes to building that ethical culture. HUD does not do that, and I don't know of many agencies who do that, quite frankly, in the government.

Mr. DELANEY. What about the training as it relates to really what the limitations are? How do you feel that is done?

Mr. MONTOYA. In some of the employees who come to us, and we ask them why are you coming to us, I am not your first-line supervisor, many times their answer is, "My manager is incompetent, they need training, they don't know how to handle this, they won't handle it." So I think HUD would do better at getting their managers trained. But, unfortunately, the examples we are talking about today are at the highest levels of the organization. The Assistant Secretary is a political appointee, Mr. Mincberg was a schedule C, Ms. Gross was in the GS–15 position. Those are high-ranking positions. Those are not rank-and-file positions.

Mr. DELANEY. Right.

Mr. MONTOYA. So that is a larger concern for me.

Mr. DELANEY. Right. Again, I am really gratified that the Secretary is working with you in sending out those messages. Because that is exactly the kind of tone at the top I think we need. And it sounds like there is a lot to build on that, so—

Mr. MONTOYA. Absolutely.

Mr. DELANEY. But, again, I appreciate both of your testimonies.

Mr. MONTOYA. Thank you—

Mr. DELANEY. And I thank you.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Maine, Mr. Poliquin, for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman. And thank you very much, Mr. Montoya and Ms. Perez, for being here today. We really appreciate you being here and being forthright with us.

Mr. Montoya, Deborah Hernandez and Sandra Henriquez—am I correct in assuming they were senior personnel at HUD or are senior personnel at HUD?

Mr. MONTOYA. Ms. Henriquez was the Assistant Secretary, and that is a politically-appointed position. She is no longer with the organization.

Mr. POLIQUIN. Right. Is that a senior position at HUD, sir?

Mr. MONTOYA. Absolutely, sir.

Mr. POLIQUIN. Okay. And how did they both meet Debra Gross?

Mr. MONTOYA. I think Deb Gross came to their attention, quite frankly, by somebody in, at the time, an appropriations committee who was forwarding her name to HUD to hire.

Mr. POLIQUIN. Okay. And Debra Gross was a lobbyist advocating for the funding of taxpayer dollars for affordable housing. And so, that might have been how they got to know Ms. Hernandez and Ms. Henriquez, who had senior positions at HUD. Is that correct?

Mr. MONTOYA. That is correct. And our indication is that they actually have a personal relationship outside the workplace.

Mr. POLIQUIN. They did, or they do not?

Mr. MONTOYA. That they did at the time, and I believe they still do at this—

Mr. POLIQUIN. And am I correct in assuming that Ms. Gross was paid more than the normal Federal employee at that grade level?

Mr. MONTOYA. Yes, sir, that is correct.

Mr. POLIQUIN. Okay. And she was hired by Ms. Hernandez and Ms. Henriquez. Is that correct?

Mr. MONTOYA. That is correct.

Mr. POLIQUIN. Okay. Am I correct in assuming that Ms. Gross, when she was at HUD but still a lobbyist for funds dispersed by HUD for programs she was lobbying for, also hired two other employees who were former lobbyists to come and work with her at HUD?

Mr. MONTOYA. One of them was a former lobbyist. The female she hired I don't believe was a lobbyist.

Mr. POLIQUIN. Yes.

Mr. MONTOYA. But I don't—I would have to go back and check my records.

Mr. POLIQUIN. Do you find that odd?

Mr. MONTOYA. I don't find it odd that you would bring people into an organization that you had worked with if they were good. I do find it odd that she was bringing them in for the purposes of helping her deregulate—

Mr. POLIQUIN. Sure. And part of that work, I believe, Mr. Montoya, was Ms. Gross—who is a former lobbyist now—working at the organization that she used to lobby for.

Mr. MONTOYA. Correct.

Mr. POLIQUIN. Okay? She was attempting to weaken the income verification system such that taxpayers who were funding affordable housing would have less of an opportunity to verify that those taxpayer funds were going to the right people in the right amount. She attempted to weaken that system. Is that correct, sir?

Mr. MONTOYA. Yes, sir. A system that, at one point, was costing the Department $3 billion.

Mr. POLIQUIN. Okay, and in 2000—

Mr. MONTOYA. They brought it down to $1 billion.

Mr. POLIQUIN. Okay. In 2013, I believe, there were $1.2 billion of improper payments—

Mr. MONTOYA. Correct.

Mr. POLIQUIN. —made by HUD, who shouldn't receive those payments, or they received too much. Is that correct?

Mr. MONTOYA. That sounds about right, yes, sir.

Mr. POLIQUIN. Okay. And Ms. Gross—who is the former lobbyist, now working at HUD—was attempting to weaken that system with two other people that she hired from the outside. Is that correct?

Mr. MONTOYA. That is correct, sir.

Mr. POLIQUIN. Do you think it is normal practice here in Washington, sir—I am a freshman Congressman—for these large agencies that are responsible for disbursing taxpayer dollars for good causes to hire people who used to lobby them? Isn't that sort of like hiring the fox to guard the chicken coop?

Mr. MONTOYA. It depends on what position you put them in. In this case—

Mr. POLIQUIN. Yes, but these are senior officials at HUD. Is that correct, sir?

Mr. MONTOYA. Yes, sir.

Mr. POLIQUIN. Okay. Am I correct in assuming that former Deputy Secretary Maurice Jones, Jennifer Jabroski, Francey Youngberg, Jonathan Horowitz, and Elliot Mincberg sent out an email to 1,000 individuals, including 47 of their HUD staffers, lobbying, or asking them to lobby, 17 U.S. Senators to pass legislation favorable to HUD where they worked? Is that correct, sir?

Mr. MONTOYA. That is correct, sir.

Mr. POLIQUIN. Yes. Is that against the law?

Mr. MONTOYA. That would be a determination by DOJ.

Mr. POLIQUIN. And what have they determined?

Mr. MONTOYA. They didn't accept the case from us as a referral. They referred it back to HUD for administrative action.

Mr. POLIQUIN. Okay. So they did not—Justice decided not to determine if this was illegal or not.

Mr. MONTOYA. Correct.

Mr. POLIQUIN. Do you think it was illegal, sir?

Mr. MONTOYA. Sir, I am not in a position to be able to answer that.

Mr. POLIQUIN. Do you think it broke the spirit of what we are trying to do here in government?

Mr. MONTOYA. Absolutely, it broke the spirit.

Mr. POLIQUIN. Okay. Am I also correct that one of these individuals, Elliot Mincberg, tried to impede or did, in fact, impede your investigation regarding the lobbying of 17 Senators to pass legislation favorable to HUD? And he did that by intimidating staffers, and by also trying to influence testimony of other witnesses? Am I correct, sir?

Mr. MONTOYA. That is correct.

Mr. POLIQUIN. Okay. Does the new HUD Secretary, Julian Castro, have any experience in dealing with affordable housing issues?

Mr. MONTOYA. Sir, I believe when he was the mayor in San Antonio, he—

Mr. POLIQUIN. Does he have any experience in dealing the affordable housing issues, sir?

Mr. MONTOYA. I don't know that I could answer that.

Mr. POLIQUIN. Okay. One last question, if I may, Mr. Chairman. I am going to ask you if these individuals are still working at HUD? And if not, what are they doing? Former Deputy Secretary Maurice Jones is no longer at HUD. Is that correct?

Mr. MONTOYA. That is correct.

Mr. POLIQUIN. Okay. Deborah Hernandez, where is she?

Mr. MONTOYA. She is now in the—

Mr. POLIQUIN. Is she at HUD, sir?

Mr. MONTOYA. She is at Ginnie Mae. She is still—

Mr. POLIQUIN. Okay, she is still at HUD, and still being paid by taxpayer dollars, even though she has been involved in this mess.

Mr. MONTOYA. That is correct.

Mr. POLIQUIN. Okay.

Chairman DUFFY. The gentleman's time has expired.

Mr. POLIQUIN. May I have another minute, sir? I am a freshman. I think you would—that is a request that is fair.

Chairman DUFFY. The gentleman will be recognized for 1 more minute. And we will offer a 6-minute questioning to—

Mr. GREEN. If you would, Mr. Chairman, I will claim that additional minute. Thank you.

Chairman DUFFY. Very well. The gentleman is recognized for an additional minute.

Mr. POLIQUIN. Thank you, Mr. Chairman. And thank you, Mr. Green, for that consideration. I appreciate it.

Mr. Montoya, are you surprised that hardworking American taxpayers have lost their trust in government? When you have huge agencies like HUD that are responsible for doing good things for the American people, but abuse and misuse taxpayer dollars, hire lobbyists who used to be pulling for funding and now are advocating on the inside for their former organizations, that hire individuals without interviewing them and pay them more than they should, and then when they are caught they try to impede your investigation by intimidating staffers and trying to influence the testimony of others, do you think there is any reason why the American people have lost their faith in government, sir?

Mr. MONTOYA. I would want to categorize the career Federal employee versus what we have here. In many of the examples, these were not career Federal employees. They were in the Department for a very short period of time—

Mr. POLIQUIN. So you think this is all—do you think—

Chairman DUFFY. The gentleman's time has expired.

Mr. POLIQUIN. Thank you very much, sir. I appreciate it.

Chairman DUFFY. Thank you, Mr. Poliquin.

The Chair now recognizes the gentleman from Missouri, Mr. Cleaver, for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman, and thank you to Ranking Member Green.

Not to be argumentative, but the Secretary was mayor of San Antonio, the second-largest city in Texas. I was mayor of the largest city in the State of Missouri. And it is virtually impossible for a mayor of one of the major cities not to deal with affordable hous-

ing almost on a daily basis. And it would be rare, maybe nonexistent, that a mayor of one of, say, the top 50 cities in the country would not—maybe top 75—deal with affordable housing, including probably some of the smaller cities.

But my question goes to the disagreement, Mr. Montoya, between the IG's office and HUD's, not in terms of the overall reported wrongdoing, but rather, I think, on some key points that I would like to get into a little deeper. Your report suggests that HUD paid the IPA a full salary and that is a violation, whereas HUD says that there is no mandate by OPM that there should be cost-sharing. OPM does not demand or require cost-sharing. Is that correct?

Mr. MONTOYA. I am not sure that I said it was a violation. It does not demand cost-sharing, but I think it does raise the question as to why.

Mr. CLEAVER. I want to go in this direction. Do you think that there is a need for greater clarity in what happens when we have this transfer of personnel to another Department as to the payment of the salary? Does your report at least imply that there should be clarity, or are you saying there is clarity?

Mr. MONTOYA. No, there should be more clarity. For example, OPM says that there is no restriction for these IPAs to hire people, right? OPM, I think, says though that the spirit of it suggests that they shouldn't be in hiring positions, they should be more in advisory. So that has to be cleared up. And I think, yes, the pay issue needs to be cleared up, as well.

Mr. CLEAVER. And I think that may be something that this committee needs to deal with. And my second and final point that deals with some disagreement is the fact that HUD suggests that based on the advice of the General Counsel, Ms. Gross was not required to submit disclosures or attend the ethics training. Is that correct?

Mr. MONTOYA. Yes, sir, that is their position. We wholeheartedly disagree. We recommend that they go to the Office of Government Ethics to get an opinion from them. I don't believe they have done that at this point, though.

Mr. CLEAVER. Do you disagree that the General Counsel said that this was not required?

Mr. MONTOYA. No, I agree. They said it was not required. I disagree with their opinion and their position. I believe it is required. I believe it should be required.

Mr. CLEAVER. So, there is a disagreement between the General Counsel and the IG?

Mr. MONTOYA. Correct, sir.

Mr. CLEAVER. Okay. So the point I am trying to make, and perhaps poorly, is that there seems to be a number of points that are not clear. And so the agency is now getting tagged with being—having major ethical lapses on some issues that are not clear. Now, I am not defending anything, any wrongdoing. But I am saying that it might not be in the best interest of the Federal Government, at a time when there are folks who are preaching and pushing distrust in the government of their own country. And so, do you agree that we need to clear up at least these two points?

Mr. MONTOYA. I don't know just how much clarity one needs. I think that, one, HUD is looking at these things. And there were a number of people who felt that this issue was an appearance issue. I will give credit to CLPHA. Even their Executive Director, before she let her Deputy Director go to HUD, raised the concerns that she thought this was a conflict, correct? There were several employees within the Department who raised concerns that it was a conflict. They were retaliated against and reassigned to other locations.

So I don't know how much clarity you need if appearances tell you.

Mr. CLEAVER. I agree, that was wrong. We cannot ever support wrongdoing. That was wrong. But if the General Counsel says that it is not required to submit disclosures—and I am getting ready to deal with the IPA—what do I do?

I didn't go to law school and—thank you, Mr. Chairman.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentleman from Arkansas, Mr. Hill, for 5 minutes.

Mr. HILL. I appreciate the opportunity. Thank you, witnesses, for being with us today. I want to associate myself with the remarks of Mr. Delaney from Maryland on those of us who come to Congress from the private sector who spend hours and hours of personnel time trying to comply with a myriad of government regulations and duties and responsibilities. And I thought he summarized that quite well.

Mr. Montoya, is there a whistleblower program at HUD?

Mr. MONTOYA. I don't know that HUD itself has one, but we have one in the OIG's office.

Mr. HILL. Is each cabinet agency required, under OPM requirements, to have an independent whistleblower process connected to their Departmental IG, for example?

Mr. MONTOYA. Yes, sir.

Mr. HILL. And how long have you been at HUD? Remind me.

Mr. MONTOYA. I have been there for 3 years now, sir.

Mr. HILL. Have you been at another cabinet agency before that?

Mr. MONTOYA. Several others, yes, sir.

Mr. HILL. So how does the whistleblower activity at HUD compare to previous places you have been? Are there more complaints?

Mr. MONTOYA. I don't know that I have enough background to answer that question except to say that even with regards to the Gross case, we still see retaliation of employees when they bring up issues like questioning the propriety of bringing in a lobbyist and their being reassigned. So that does raise concerns for me.

Mr. HILL. Yes, because the private sector—since Sarbanes-Oxley, of course—all have the public companies all have responsibility under whistleblower statutes. So I am not sure the government would be very accommodating or thoughtful in a response like that if it were a private sector player. Who is the executive officer at HUD responsible for H.R. policy?

Mr. MONTOYA. I don't know off the top of my head who that current person is. I think it was Mr. Anderson, but I think he is leaving, so I am not sure who is in the acting role at this point.

Mr. HILL. It is surprising to me that you don't know that, as a part of this investigation. Wouldn't the Assistant Secretary or Undersecretary for Administration responsible for the Department's H.R. practices be somebody you would have questioned in your investigation?

Mr. MONTOYA. Well, not necessarily. It just depended on the circumstances. I don't believe we had to interview him in this particular case. Because it was an IPA process that didn't necessarily go—and HUD is very stovepiped, right? So when this was happening in a PIH, that is who primarily was dealing with it. It wasn't necessarily the overall human resources manager at HUD.

Mr. HILL. So do you think that is a weakness, a management weakness, in the Department that they don't have an overall personnel person who oversees this in all their independent—quasi-independent Departments or agencies?

Mr. MONTOYA. We testified on a number of occasions that we think the Department is too stovepiped on a number of issues, including their IT systems, that there is not this enterprise-wide view of a lot of these things: H.R.; legal; and in some cases, their IT system. There are a number of areas that have caused us concerns.

Mr. HILL. Do you think the idea of an IPA as a concept has been taken advantage of here in this particular instance? And do you think that this merits a more systematic overview by Congress in the use of the IPAs by Executive Branch agencies?

Mr. MONTOYA. We have seen in HUD's situation that it looks like they have misused it on a couple of occasions. And we are looking at the other 16. That would draw a question for me as to what the rest of the government is doing with these IPAs.

Mr. HILL. Does the Office of Personnel Management have some responsibility in setting the best practices for use of IPAs across cabinet agencies?

Mr. MONTOYA. Yes, sir. They are the ones who set the standards and the guidelines for that.

Mr. HILL. Were the actions at HUD reported to OPM, and did they take any action in the process of reviewing this particular matter?

Mr. MONTOYA. I believe we did refer it to OPM. I couldn't tell you off the top of my head, sir, what response we received from them on that. I would have to get back to you on that.

Mr. HILL. I would appreciate it if you would sort of respond to my line of questioning on IPAs, what the best practice policy is from OPM on that. And then I would be very interested in the results of your review of the other 16 at HUD.

Mr. MONTOYA. Yes, sir.

Mr. HILL. Thank you for your service to your country.

And I yield back, Mr. Chairman.

Mr. MONTOYA. Thank you, sir.

Chairman DUFFY. The gentleman yields back.

The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you so much, Mr. Chairman, and Mr. Ranking Member. And thank you also to our witnesses today.

Let me just first say that I certainly join my colleagues in wanting to be on the record for saying how concerned I am about the

instances of impartiality, the conflict of interest that you both have outlined in your testimony. And also, the improprieties with HUD's use of the IPA funds.

Second, let me just say how appreciative I am for the joint letter. And especially in paragraph one, when you both talk about if, together, we can take care of the mismanagement and the waste, we can do what our real mission is, and that is to expand the opportunities for all.

And that ties into my third statement, as I go into my question, is several of my colleagues have said it is not about HUD and the programs. I want to be on the record saying that I somewhat disagree with that. Because every time you come into a hearing and we talk about the wrongdoings, the rogue employees, it frequently, down the road, leads to the culture of the entity and the organization and how we put dollars in it.

I am very much a proponent of HUD and the services that they provide. With that said, when I go to your testimony you stated that HUD cannot know whether the policy decisions enacted during the Deputy Director's tenure were inappropriately influenced or in the best interest of HUD and all of it's stakeholders.

Can you place explain this finding, and how HUD can mitigate or eliminate the IPA mobility program improprieties? And especially since you talked about the clues that you saw.

Mr. MONTOYA. Yes, ma'am. Thank you for the question. There is only so much we can get from witnesses and what they tell us, and sort of the spirit as to what was going on. We obviously weren't privy to a lot of the conversations that Ms. Gross and Ms. Henriquez and Ms. Hernandez may have had with the regulated industry.

So we are putting it back on HUD to sort of dig a little deeper with their staff to feel them out, and figure out whether, in fact, there were things that were changed that maybe shouldn't have been or that they should call into question.

My larger concern with making that statement was that Ms. Gross at one point had inquired as to how to avoid going through the Departmental clearance process, having to go through the OIG. She was actually trying to find a way to keep us from seeing and hearing, through that clearance process, what she was doing.

So because of that, I do have some concerns that maybe something slipped by us. And so we are putting it back on HUD to review themselves the policies before, during, and after she left to ensure that nothing got by any of us.

Mrs. BEATTY. Do you think that we should be looking at putting more human and financial resources into different, better or more training on accountability, management or the rules and regulations? Because these things, earlier you said these are very clear rules and regulations of what a person could do, whether hiring or bringing someone in at the appropriate salaries for the GS–13s or GS–15s. But yet I heard a figure of $40,000 more given to this person, being given bonuses when Federal employees did not get—

Mr. MONTOYA. Well, ma'am, I guess my answer to that would be that I don't think there are enough rules, regulations, policies, procedures or training that are going to influence a person's conduct. I think ultimately it boils down to how that person is going to con-

duct themselves in the workplace, especially as Federal employees. We have this stewardship responsibility that we are entrusted to care for these very sensitive positions that we hold on behalf of the taxpayers. So I think it boils down to the person.

I just don't believe—I am not a proponent of more and more rules, rules, rules, regulations, much like the two gentlemen testified or commented about in the regulated industries. It really boils down to how people are going to behave. And I think that is more of a conduct ethical issue with the individuals.

Mrs. BEATTY. You just mentioned how people behave. Do you believe that the vast majority of the HUD employees are doing the fair due diligence, or can you compare it to saying that maybe what we are hearing today; are these just a few bad actors?

Mr. MONTOYA. All I can say to you is that a vast majority of the employees at HUD are really hardworking, conscientious civil servants. They have an honorable mission, one that I thoroughly enjoy myself.

And, quite frankly, there are a number of them—a number of conscientious employees who were the ones who called us on these issues. They saw the wrongdoing, they saw these misconducts. They are the ones who are calling us. And I think that is fantastic that employees feel good enough to call us. And hopefully, today they are hearing that my office will, in fact, do something about that when they do call.

Mrs. BEATTY. Thank you.

Chairman DUFFY. The gentlelady yields back.

The Chair now recognizes the gentleman from Virginia, Mr. Hurt, for 5 minutes.

Mr. HURT. I thank the chairman for holding this hearing. This is my first appearance on this Oversight Subcommittee, and I can tell you I represent Virginia's 5th District. And I think that my constituents, if they were hearing what we are hearing today, would be bewildered. Perhaps not surprised, unfortunately, but bewildered by what we are hearing. And I guess a couple of quick questions for Mr. Montoya.

Where is Ms. Hernandez now?

Mr. MONTOYA. She is now with Ginnie Mae in—

Mr. HURT. And Ms. Henriquez?

Mr. MONTOYA. Ms. Henriquez left. She is with another housing-type association. I couldn't tell you off the top of my head—

Mr. HURT. A lobbying association, like—

Mr. MONTOYA. I don't know if it lobbies or not, sir, to be honest with you.

Mr. HURT. What about Ms. Gross? Where is she?

Mr. MONTOYA. She has gone back to CLPHA in the role that she held the whole time, the Deputy—

Mr. HURT. Let's talk about CLPHA. It is actually called the Council for Large Public Housing Authorities, right?

Mr. MONTOYA. Correct.

Mr. HURT. What is its purpose?

Mr. MONTOYA. To engage not only Congress, but the Department.

Mr. HURT. Who does it represent?

Mr. MONTOYA. They represent the housing authorities, the large—

Mr. HURT. And so the employees of this organization, they advocate for policies that are favorable to these authorities.

Mr. MONTOYA. Yes, sir.

Mr. HURT. Also called "lobbying," in the—

Mr. MONTOYA. Yes, sir.

Mr. HURT. So how long had Ms. Gross worked for this lobbying outfit prior to being engaged at HUD?

Mr. MONTOYA. I don't have an exact date in front of me. For a number of years.

Mr. HURT. What was she being paid when she was hired?

Mr. MONTOYA. I couldn't tell you the exact salary. I know the GS–15 salary is at about $155,000, so she was making just under $200,000—

Mr. HURT. Working for the Council.

Mr. MONTOYA. For the Council, correct, sir.

Mr. HURT. And so I guess my question is, is when they went through the process and she was denied initially, it sounds like that was voided, and then she was sort of hired on the side through this IPA. Is that right?

Mr. MONTOYA. Yes, sir. And we have emails to the effect that they, in fact—

Mr. HURT. Why was she hired? Why do you think that she was hired?

Mr. MONTOYA. According to—

Mr. HURT. Share that with us?

Mr. MONTOYA. According to Ms. Henriquez—and I will quote her—"She wanted to shake it up."

Mr. HURT. What does that mean? What do you think it means?

Mr. MONTOYA. I think, quite frankly, it meant that she wanted to shake it up so they could deregulate. Because that is in the—that is in—

Mr. HURT. That was the—in the interest of the—

Mr. MONTOYA. Of the regulated.

Mr. HURT. —of the—and in the interest of those who pay to be members of this authority's—

Mr. MONTOYA. Correct.

Mr. HURT. —Council, correct?

Mr. MONTOYA. That is correct, sir.

Mr. HURT. So that was why she was brought in?

Mr. MONTOYA. That is what it looks like.

Mr. HURT. And she was denied, based on that fact alone, from the ordinary hiring process?

Mr. MONTOYA. I don't know—

Mr. HURT. Is that how I understand it?

Mr. MONTOYA. I don't know why she was denied, except that she—

Mr. HURT. You said that she was disqualified, or I saw on your report that you said she was disqualified.

Mr. MONTOYA. Right.

Mr. HURT. Disqualified.

Mr. MONTOYA. The email communication suggests was wanted to hire her under the IPA so she could make more money, so she could maintain her salary.

Mr. HURT. And so the concerns—what is it that dictates the concerns that the rules or the statutes in the subject—is it a conflict of interest? Is that the concern for why somebody would not be hired as an ordinary employee?

Mr. MONTOYA. Yes. Not only does—

Mr. HURT. A conflict of interest?

Mr. MONTOYA. Yes, sir. An inherent conflict of interest.

Mr. HURT. Okay, so why is it that she could be hired as an—under this intergovernmental personnel agreement without concern for conflict of interest, but she couldn't if she was being hired as an ordinary employee?

Mr. MONTOYA. I don't think that she couldn't. I think maybe her qualifications would have been satisfactory. I don't think it had to do with that. I think they disqualified her so that they could then hire her under the IPA. And therein lies the little conspiracy, if you will.

Mr. HURT. So when your office confronted Ms. Henriquez and Ms. Hernandez, did they tell you the truth? Did they tell you the truth about whether or not they had communicated with her in advance?

Mr. MONTOYA. Yes, Ms. Henriquez was very quick to tell us, yes, that is what I did. It was Ms. Gross and the two employees that she hired who were less than forthcoming.

Mr. HURT. Okay, so what does that mean? Did they lie to impede the investigation?

Mr. MONTOYA. I guess if you want to go down that road, yes. That—we like to call it—because we don't really know, in some cases, exactly where that fine line was. But yes, they were absolutely less than truthful with us.

Mr. HURT. Really quickly—my time is running out—but Ms. Perez, following up on Mr. Hills' question, I would love to get your thoughts on the differences between the hiring practices for an ordinary employee, Federal employee, versus under this intergovernmental personnel agreement. Why on earth would the concerns relating to conflicts of interest be different?

And my time has expired, so—

Ms. PEREZ. Sir, actually we haven't done any work in that area.

Mr. HURT. Okay.

Ms. PEREZ. We are aware generally of the Act, but haven't worked on that area.

Mr. HURT. Thank you.

Ms. PEREZ. Thank you.

Chairman DUFFY. The gentleman's time has expired.

The Chair now recognizes the gentleman from Massachusetts, Mr. Capuano, for 5 minutes.

Mr. CAPUANO. Thank you, Mr. Chairman. I want to thank you two for testifying today, and I apologize for not having been here but you know how it is. We are between two committee hearings. So I didn't hear it all, so some of the stuff I might have to ask or say might be repetitive. And for that I apologize, but that is what we do here.

I guess I want to put things in perspective. As I understand it, there are about 9,000 HUD employees. Is that a reasonable estimate?

Mr. MONTOYA. Actually about 8,000, sir.

Mr. CAPUANO. So, about 8,000 employees, and looking at a list—give or take a dozen names, 15 names here, of people who have committed acts that are questionable, ranging from the terrible, horrendous crime of nepotism, trying to help a family member—which I know is against the rules, I get that—but I don't think any of us want to send anybody to Sing-Sing for that. We want to make sure it doesn't happen to the best of our ability, but there are worse—two other people who stole large sums of money, and maybe some other things.

That means roughly—my calculations—0.1 percent of the employees have committed significant enough issues for you to get involved in. Not that that forgives the individual actions at all, but I just don't want anybody to walk away with the idea that somehow HUD or any other agency that I am aware of is full of people, all of whom want to commit nefarious, terrible actions.

I know that is not your intention, but sometimes when we sit here and only talk about the bad actors that is what some people hear at home: that the world is full of bad actors. And for me, I am a former mayor, as are some of my other colleagues. A lot of our time is spent dealing with people who do things they shouldn't be doing.

We don't spend our time and effort, as you don't spend much of your time, with people who have done the good things. Because that is not what you are there for. You are there to police it and to do all those things. And that is the right thing. And from everything I have heard, you have done a great job, and the IG's office is an area that we all expect and we all support and appreciate. But I don't want anybody listening to this to think that somehow everybody at HUD is scheming to try to deal around the edges.

I know that for me, one of my biggest problems was my police officers. Because, again, they only dealt with people, every day, who had committed some action that was wrong, either speeding or 10 times worse. And sometimes they might forget that 99.9 percent of us are good, law-abiding citizens. Actually, that is my problem right now, my NSA problem, but that is a different issue.

So I just wanted to be clear about that. To me, I think that is important. And I really do think that—I guess the other thing I heard is that there was some concern about unions. I want to be really clear. In my—I have negotiated with unions, and unions are there.

You never—unions don't have to come defend their 99.9 percent good members. They only step up when there is a wrongdoing to defend their members to make sure that they get proper treatment. So I—again, that is their job. It is like a lawyer. They have a responsibility to their membership to make sure that their membership really did do a bad act that was not overly punished.

And to be perfectly honest, the only thing I found problematic about your written testimony is the fair amount of time spent on differences of opinion on category or degree of punishment. You think that some people should have been punished more severely than they might have been.

I guess that is fair. But I also don't think that is really—I don't think that is a measure of whether you have been successful or

whether HUD is a good agency. That is a reasonable difference of opinion. I personally think that, for instance, most of the people on Wall Street who did bad things all got off. They all got off. Nobody from Wall Street has paid an ounce of contrition for the actions they took in 2006, 2007, and 2008.

So I understand the problems, but I don't want to lose focus as to what we are here for. We are here to make sure that HUD employees—and that is your job—toe the line. And when there is a wrongdoing, that the HUD administration helps you and others correct that situation.

And from what I have seen and what I have read on you, most of that has happened. Is that a wrong impression? Is that a wrong conclusion, from your report?

Mr. MONTOYA. To be clear, sir, the report gives you only a small smattering of examples. Unfortunately, there are more. But I would say it is not like there is a rampant misconduct issue in HUD. I think my major concern is how HUD is dealing or not dealing with misconduct when they do come across it. And I think with regards to my written testimony, that is where I do the parsing. Not so much about what they did or could have been more, but how they are handling what they are doing to create an ethical culture.

Mr. CAPUANO. And do you feel that the current Administration is doing—I am getting—not necessarily everything you are going to want, but are they—grade them on a scale of one to 10; 10 being perfect, being you being the guy making the decision, one being, I don't know, the most unethical person in the world making the decision. What would you give them as a grade?

Mr. MONTOYA. Both the new Secretary and the Deputy Secretary have only been there maybe 6 or 7 months, the Deputy Secretary even less. I will give him a 10 with regards to the Secretary signing that joint letter. Because I think that speaks volumes to the tone at the top. I could give him higher than a 10 because I think that is the best thing he could have done to establish his game plan for how he is going to run the organization. And I look forward to working with him with that.

Clearly, these things we are talking about were not under his tenure. And so, I do look forward to how he and the Deputy Secretary are going to handle these going forward.

Mr. CAPUANO. I just want to point out for the record that no one has ever given me a "10" on anything. So, that is pretty good.

Thank you. Thank you, Mr. Chairman.

Chairman DUFFY. The Chair would agree. The gentleman's time has expired.

The Chair now recognizes the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. And I would like to thank our witnesses for taking the time to be here today. We have covered a lot of ground, and I really don't want to rehash a lot of that. But I really wanted to question you, Mr. Montoya. In your opening statement, you brought up that you had been threatened in the OIG when you are doing some of these investigations. I find that pretty curious. How are they threatening you?

Mr. MONTOYA. In the case of Mr. Mincberg, he threatened to hold my agents accountable. He never really clarified what that meant.

But the fact that he would even threaten the agents to hold them accountable in some way, shape or form, to me, is just inappropriate and not something that I would want to start seeing more of at HUD.

Mr. TIPTON. Now, the OIG—obviously, through other Departments—is this just isolated to HUD? Or do you have this type of reaction as you are doing other investigations?

Mr. MONTOYA. I don't know that we have had anybody—and so just to be clear, he was at a very high-ranking position. He was a schedule C, he was a political. So for him to do it, that certainly doesn't go well. We don't get that sort of disrespect, if you will, from rank and file. I think most of them are very willing to cooperate with us. And, again, these are good employees just trying to do their job every day.

Mr. TIPTON. So you haven't experienced it from other appointed officials? This is just something that was isolated to HUD, where you had threats that were coming back—

Mr. MONTOYA. This one was isolated to the circumstances. But I spoke very loudly about it so that everybody got the message it was not something I was going to allow or put up with, quite frankly.

Mr. TIPTON. Okay, thank you. I did want to follow up on Mr. McHenry's question, as well. You had indicated that you have the systemic implementation report that is coming out. And I think there is frustration on both sides of the aisle when we are talking about $843,000, American taxpayer dollars, which are being lost through fraud coming out. When is that report—is that finalized?

Mr. MONTOYA. Are you referring to the IPA review that we are—

Mr. TIPTON. I believe so. I think—I am just quoting you. You referred to the systemic implementation report.

Mr. MONTOYA. Oh, that had to do with how HUD was not appropriately handling personnel background investigations or review before they hired them. So we had a situation where they hired an individual that they clearly should have done a little bit more of a background on before hiring. And so we went in to view why this happened. So we don't just look at what happened, we look at why it happened. We issued this report to say we think you could do this better, that better, you can create some policies that will help you avoid that. That report went to them 5 or 6 months before they then hired the individual with a long criminal history who was able to steal almost $800,000.

Mr. TIPTON. So do you feel your report was ignored?

Mr. MONTOYA. I don't know. I have my staff following up with the Department to figure out did you do anything in that 6 months or did you ignore us, or is it just taking you that much longer to get this thing in place? I don't—I can't answer that—

Mr. TIPTON. Just by way of timeframe, when did you issue that and the follow-ups, and how long has it been since HUD has responded to you?

Mr. MONTOYA. I don't know that I have an exact date off the top of my head for you on the implication report. I can certainly get that back to you. Generally, HUD won't respond on when they finish it. We just sort of expect that they do. And so that is why I have my agents going back to—

Mr. TIPTON. Has this been a year, 2 years?

Mr. MONTOYA. I don't know if I could give you an exact date, sir. I would have to get back to you on that.

Mr. TIPTON. So we have absolutely no idea, and there is no enforcement. They aren't indicating that—do they feel an obligation to get back to you?

Mr. MONTOYA. In certain situations we do require them to get back to us in a sort of 90-day period. I don't know if we did on this implication report or not.

Mr. TIPTON. Do you think that would be a good idea? In Washington, $843,00 is not a lot of money. But I will tell you, in my hometown, it is.

Mr. MONTOYA. Oh, absolutely, sir. And yes, absolutely, it would be a good idea.

Mr. TIPTON. And was it—in that recommendation or that report, also, a look-back? Because you just cited that after you had put out this report this person slipped through the crack. So was there also a recommendation to be able to have a look-back on employees who were hired in that interim period of time?

Mr. MONTOYA. Yes, and that prompted us to go back to look at what is going to go on. And we will put that back to HUD, they will go back to review the employees they hired within that timeframe.

Mr. TIPTON. Okay, great.

Ms. Perez, I don't want you to feel completely left out. And Mr. Montoya, you might want to speak to this, as well. I am concerned about the lobbying issue, as well, going over. And as I understand, under Section 716 on the Anti-Lobbying Act, the Deputy Secretary is a Presidential appointee. Were any rank and file employees involved in terms of doing the letter or issuing the letter for that lobbying?

Ms. PEREZ. Yes, sir, there were a number of employees involved in preparing the email that the Deputy Secretary transmitted. Our focus in the legal opinion was looking at whether the Department had violated the anti-lobbying provision of Section—

Mr. TIPTON. And that was at his direction. So it was an abuse of power.

Chairman DUFFY. The gentleman's time has expired.

Mr. TIPTON. Thank you.

Chairman DUFFY. In the interest of equal time, the Chair now recognizes for 1 minute the gentleman from Texas, the ranking member, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. And I may give you some time back. I want to thank the witnesses for appearing today. I am especially pleased to hear you say that you would give the new Secretary, Secretary Castro, a 10, which is an indication to me that you are looking forward to good things from him.

I look forward to working with you, and I believe that HUD is going to move in the right direction. There are some things that have to be corrected. I think they are taking corrective actions. But we are moving in the right direction. And we all agree that HUD is a necessary agency and that it does good things.

Thank you very much.

Mr. MONTOYA. Thank you, sir.

Chairman DUFFY. Thank you, Mr. Green.

The subcommittee thanks both Ms. Perez and Mr. Montoya for your work, your service, and your testimony today. We appreciate it.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, this hearing is adjourned.

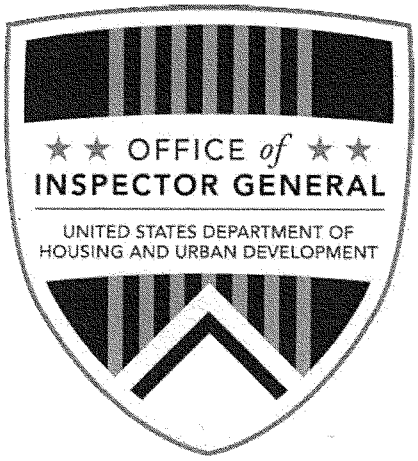
[Whereupon, at 11:40 p.m., the hearing was adjourned.]

A P P E N D I X

February 4, 2015

Testimony before the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations

"Exploring Alleged Ethical and Legal Violations at the U.S. Department of Housing and Urban Development"



Testimony of
The Honorable David A. Montoya
Inspector General
Office of Inspector General
U.S. Department of Housing and Urban Development

February 4, 2015
10:00 a.m., Rayburn House Office Building, Room 2167
UPDATED February 11, 2015

Chairman Duffy, Ranking Member Green, and Members of the Subcommittee, I am David A. Montoya, Inspector General of the U.S. Department of Housing and Urban Development (HUD). Thank you for the opportunity to testify regarding our investigative and audit work of ethical and legal issues at the Department including lobbying activities, its use of agreements under the Intergovernmental Personnel Act (IPA) and other investigations of HUD employee misconduct.

The HUD Office of Inspector General (OIG) is one of the original 12 Inspectors General authorized under the Inspector General Act of 1978. The OIG strives to make a difference in HUD's performance and accountability. The OIG is committed to its statutory mission of detecting waste, fraud, abuse, and mismanagement as well as promoting the effectiveness and efficiency of government operations. While organizationally located within the Department, the OIG operates independently with separate budget authority. This independence and our impartiality are imperative and allow for clear and objective reporting to the Secretary and to the Congress.

HUD Lobbying Activities

On February 26 of last year, I testified before this Subcommittee regarding our investigation of HUD lobbying activities. The HUD-OIG received a request dated August 28, 2013 from Representative Patrick McHenry, former Chairman, U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight and Investigations (Subcommittee) regarding an e-mail communication sent by former HUD Deputy Secretary Maurice Jones on July 31, 2013. The e-mail communication was addressed to "friends and colleagues" and called on the recipients to contact specific U.S. Senators and encourage them to vote in favor of procedural motions to advance Senate consideration of S. 1243, legislation making appropriations for fiscal year 2014 for the Department of Transportation, HUD, and Related Agencies. At the time, this matter was pending before Congress. The e-mail communication urged recipients to oppose certain amendments and suggested that recipients encourage named Senators to support final passage of the bill. The Subcommittee asked HUD-OIG to investigate this matter and advise the Subcommittee whether HUD's actions violated any federal law.

Our investigation of HUD lobbying activities concluded that HUD appeared to have violated anti-lobbying riders contained in the Consolidated Appropriations Act, 2012, and in the Consolidated and Further Continuing Appropriations Act, 2013. The riders included language that restricted the use of appropriated funds for publicity or propaganda purposes directed at legislation pending before Congress. As an appropriations measure, these provisions are subject to interpretation and enforcement by the Comptroller General of GAO. GAO issued its determination, subsequent to the hearing, on September 9, 2014, that HUD violated these anti-lobbying riders as well as the Antideficiency Act, when it obligated and expended funds to prepare and transmit the July 2013 e-mail.

At that hearing, I recounted the series of events and lapses in judgment that resulted in HUD engaging in grassroots lobbying activities that violated these laws. While our investigation did not result in criminal prosecution, it did discern an institutional failure to follow HUD's own existing internal policies. There were breakdowns in communication and in responsibility and a

failure to adhere to existing policies and procedures. This led to placing the Department and its second highest ranking official, the former Deputy Secretary, into an embarrassing situation, one that leaves an impression of lapses in judgment and in ethical decision-making. HUD officials changed existing policies, in the midst of the OIG investigation, in an attempt to legitimize their actions and impeded our investigation by withholding information and threatening the HUD-OIG investigating agents. In response to our report of investigation, HUD took no formal disciplinary action. Elliott Mincberg resigned from his HUD position in April 2014 and Peter Constantine was verbally reprimanded.

As I stated then, the series of events in that case illustrated what can happen when senior government officials veer from the course of ethical decision-making, skirt the edges, and act in a manner that is not in the government's best interest. I am here today to state that, unfortunately, we have encountered other examples of senior officials bending the rules and engaging in outright misconduct, sometimes with minimal risk that HUD will take appropriate action when it learns of the misconduct. In addition to our lobbying investigation, I will discuss the results of some of our recent investigative and auditing work as it relates to HUD's improper use of the IPA Mobility Program as well as employee misconduct cases.

HUD's Use of Agreements Under the IPA Mobility Program

The IPA Mobility Program provides for the temporary assignment of personnel between the Federal Government and state and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations. According to the Office of Personnel Management, "the goal of the IPA program is to facilitate the movement of employees, for short periods of time, when this movement serves a sound public purpose.... Each assignment should be made for purposes which the Federal agency head, or his or her designee, determines are of mutual concern and benefit to the Federal agency and to the non-Federal organization. Assignments arranged to meet the personal interests of employees, to circumvent personnel ceilings, or to avoid unpleasant personnel decisions are contrary to the spirit and intent of the mobility assignment program." Additionally, IPA appointees have an obligation to comply with the Ethics in Government Act which requires some appointees to complete financial disclosure forms.

Based upon a complaint, we reviewed two IPA agreements, one of which related to the appointment of a senior HUD official, the former Deputy Assistant Secretary (DAS), Public and Indian Housing (PIH), Office of Policy, Program and Legislative Initiatives (OPPLI). HUD inappropriately used the IPA program to appoint **Debra Gross**, the Council of Large Public Housing Authorities' (CLPHA – a housing industry group) deputy director as HUD's DAS of OPPLI. In doing so, former PIH Assistant Secretary **Sandra Henriquez** (previously head of the CLPHA organization) created an inherent conflict of interest because she placed the deputy director of an industry group in charge of PIH's policy-making division, the division responsible for developing and coordinating the regulations applicable to the entities that CLPHA represents. In essence, HUD appointed someone who represented the regulated to be in charge of developing the regulations.

HUD's lack of oversight in the IPA agreement process allowed this inherent conflict of interest to occur without prior ethical review by HUD's Office of General Counsel (OGC). Additionally,

HUD did not obtain required financial disclosure reports from Gross, failed to provide her with required ethics training, and allowed her to hire permanent HUD employees. In her HUD policy-making role, it appeared that Gross championed the public housing industry's regulation relief agenda at HUD while she retained her position at CLPHA. Also, apparent lobbying efforts by CLPHA and other housing industry groups during this period complicated the matter. Due to the inherent conflict of interest, and HUD's failure to recognize and mitigate it, HUD cannot know whether the policy decisions enacted during the deputy director's (Gross) tenure were inappropriately influenced or in the best interest of HUD and all of its stakeholders.

The investigation also determined that Henriquez, and **Deborah Hernandez**, former General Deputy Assistant Secretary, PIH may have committed prohibited personnel practices and circumvented established hiring practices when they entered into an IPA agreement with CLPHA for its employee, Gross, to serve in the position of DAS. The OPPLI DAS position had historically been held by a career HUD employee at the GS-15 pay level. Moreover, HUD incurred considerably more expense by using the IPA agreement than if they had hired Gross for the position. This was done for the benefit of Gross rather than HUD.

While not specifically prohibited, according to an Office of Personnel Management official, "engaging in hiring and staffing decisions on behalf of a Federal agency under an IPA agreement is outside the scope and intent of the IPA mobility program." While serving as the DAS of OPPLI, Gross did make hiring and staffing decisions and, in doing so, did not follow HUD hiring procedures when she hired two friends and colleagues. Specifically, Gross improperly communicated with the individuals, provided advance notice of vacancy announcements and tailored those announcements to the individuals' experience and background. Moreover, during Gross' initial interview with investigating agents she denied communications with the individuals during the hiring process. It was only after being confronted with evidence to the contrary (i.e., e-mail transmissions that showed contrary behavior) that Gross finally admitted to communicating with them. Gross also attempted to hire additional employees and bypass veteran's preference candidates. These attempts were unsuccessful.

In responding to our findings contained in a memo to the department, HUD's General Counsel did acknowledge some deficiencies in the IPA mobility program that they were working to address. However, she disagreed with our conclusion regarding the inherent conflict of interest and our assertions regarding HUD's OGC.

Our review of the second IPA agreement disclosed potential Antideficiency Act violations. Specifically, HUD incorrectly used monies in PIH and Office of Housing-Federal Housing Commissioner personnel compensation funds to pay the salary of a senior advisor to the former HUD Secretary. Additionally, HUD paid more than the agreement allowed and made payments without an agreement in place. HUD did not have procedures in place to prevent these potential Antideficiency Act violations.

From February 2011 through March 2014, PIH and the Office of Housing collectively reimbursed Community Builders, Inc., more than $620,000 for a senior advisor to the Secretary. In February 2011, HUD entered into an agreement with Community Builders, Inc., for the services of one of its employees. The Community Builders employee's primary job duties, according to the agreement, pertained to an initiative that became the Rental Assistance

Demonstration program. Under the agreement, HUD would reimburse Community Builders, Inc., a maximum of $205,000 annually ($155,000 in salary and $50,000 in benefits) for the employee's services, which was significantly less than his salary at Community Builders, Inc. The employee served as an advisor to the former Secretary; therefore, HUD's reimbursements to Community Builders, Inc. should have been made from the Office of the Secretary's executive direction account. However, from February 2011 to March 2013, the reimbursements came from PIH's personnel compensation account. In March 2013, the Office of Housing began reimbursing the senior advisor's salary. Because HUD did not use the Office of the Secretary's executive direction account for these reimbursements, HUD may have violated the Antideficiency Act.

HUD-OIG Investigations of HUD Employee Misconduct

The subcommittee also asked that my testimony include examples of recent misconduct by HUD employees. HUD-OIG is responsible for investigating alleged criminal conduct or serious administrative misconduct by HUD employees. HUD-OIG works closely with the Department of Justice (DOJ) in investigating these cases, but the decision to criminally prosecute rests solely with DOJ. Depending on the severity of the offense, DOJ may decline criminal prosecution, in favor of the agency's pursuit of administrative remedies. Thus it is imperative that HUD make full and effective use of these remedies to serve as a deterrent against future misconduct and to create an ethical culture in the workplace. In the examples that follow, where DOJ declined criminal prosecution and the offense was committed by a non-supervisory employee, I am generally precluded from identifying the individual due to employee privacy concerns.

> **Brian E. Thompson**, a former HUD loan guarantee specialist, pled guilty to a charge of wire fraud stemming from a scheme in which he stole $843,000 of government money. This scheme was carried out from May 2013 until March 2014, while Thompson worked for HUD-PIH's Office of Loan Guarantee for Native American programs. This office administers the Section 184 loan guarantee program which provides access to private mortgage financing for Indian families, Indian housing authorities (IHAs), and Indian tribes that could not otherwise acquire housing financing because of the unique legal status of Indian lands. The loans guaranteed under the program are used to construct, acquire, refinance, or rehabilitate single family housing located on trust land or land located in an Indian or Alaska Native area.
>
> If a Native homeowner defaults on the mortgage and a lender forecloses on the property, HUD manages and disposes of real estate owned (REO) properties. As a loan guarantee specialist, Thompson's duties included handling the reselling of these properties for the best possible price in order to reimburse the government for the payments made to the mortgage lender for the defaulted insured loan.
>
> Thompson sold parcels of these REO properties. On five of those parcels, he made materially false misrepresentations to third parties and diverted $843,000 of the sales proceeds to bank accounts under his control. In order to conceal these thefts from HUD, he used and submitted fictitious settlement statements that falsely listed the buyer, the contract sales prices, and the seller proceeds.

On October 2, 2014, Thompson pled guilty to one count of wire fraud and, as set forth in his plea agreement, immediately paid $197,700 in restitution to HUD. He was subsequently sentenced to 26 months in prison followed by 36 months supervised release. The plea agreement also called for Thompson to pay $843,000 in restitution to the federal government and a forfeiture money judgment in the amount of $645,700.

HUD-OIG submitted judicial documentation relating to Thompson's guilty plea to HUD officials in order for them to pursue administrative action. On November 20, 2014, Thompson resigned as a HUD employee.

Of note, and particularly troubling, was the fact that HUD hired Thompson as a GS-13 loan guarantee specialist in May 2011, even with theft and larceny arrests and convictions spanning from 1984 to 2007. Thompson also had an armed robbery conviction in 1980 that resulted in probation; a 1998 misdemeanor conviction for check deception; a felony 2008 conviction for receiving stolen property; and probation violation reports filed in 1999, 2000 and 2001.

Clearly HUD needs to assess its process for conducting background investigations for prospective employees, particularly for positions of trust such as Thompson's. Separate from the Thompson matter, on January 17, 2013, HUD-OIG submitted a Systemic Implication Report to HUD identifying weaknesses within the personnel security and suitability program. Specifically, a HUD employee was hired shortly after being criminally charged by federal indictment with mortgage fraud. During the hiring process there were no policies, procedures, management, and oversight to ensure the employee was effectively vetted before hiring. We recommended that new policies, procedures, and regulations be developed and implemented to prevent this from occurring during initial hires and for re-investigations of current employees.

* * * * *

A HUD-OIG investigation in HUD's Office of Chief Human Capital Officer determined that the former Chief Human Capital Officer **Janie Payne** and other senior HUD officials committed prohibited personnel practices by engaging in nepotism. In the case of Payne, while she did not hire relatives to work directly for her office, she advocated for the hiring of two of her close relatives for positions within HUD's Office of the Chief Information Officer (OCIO). Payne also misused her position by having a HUD employee draft and forward her husband's resume to another federal agency. This violated federal regulations regarding use of official time as well as HUD administrative guidelines relating to using government employees in duty status for other than official purposes.

Payne also misused her position by directing a HUD employee to prepare resumes for Payne and her family members using government time. The employee stated that her supervisor told her that any work that Payne wants done was to be done right away. The employee stated that she believed that Payne considered the work on the resumes as a personal favor; however, the employee stated that she did the resumes because Payne was the "boss." When interviewed, Payne stated that she believed the work on the resumes

was being performed during the employee's personal time. HUD-OIG's review of relevant e-mails confirmed that Payne had e-mail communications concerning the resumes during government work hours. More troubling was that Payne attempted to obstruct HUD-OIG's investigation by attempting to influence the other employee's testimony to HUD-OIG investigators. Payne telephoned the employee prior to her scheduled interview; when the topic of work on the resumes was broached, Payne told the employee to tell the investigators that the work was done in her spare time. The employee stated that Payne knew that she worked on the resumes on government time, and it was her belief that Payne was telling her to lie to investigators. When interviewed, Payne denied telling the employee to say that she did not work on the resumes during government time.

Karen Jackson, HUD's former Deputy Chief Human Capital Officer also committed nepotism by advocating the hiring of a close relative. Jackson did not hire the relative to work directly for her but, advocated for the hiring of her relative to a management analyst position with HUD's Office of Housing. Jackson previously worked with the Office of Housing's selecting official at another agency. The selecting official placed a vacancy announcement on USAJOBS for the management analyst position for which he encouraged Jackson's relative to apply. HUD-OIG investigators discovered that Jackson's relative was initially determined to not be qualified for the position. The selecting official then requested a second review. Based on this second review by another human resource specialist, Jackson's relative was deemed qualified for the position and was subsequently hired at HUD. The human resource specialist who initially reviewed the application maintains that Jackson's relative was not qualified for the position. The final selecting official admitted that he has had a personal relationship with Jackson and her family for over 20 years.

Allison Hopkins, HUD's former Director of Human Resources also committed nepotism by advocating the hiring of her husband as an information technology (IT) specialist within HUD's OCIO. The individual was hired at HUD via a lateral transfer from another federal agency. Prior to the transfer, however, HUD had posted a vacancy announcement for the same IT specialist position. The selecting official for the position had received a certificate of eligible candidates, conducted interviews and selected a qualified candidate. The selecting official submitted her selection and was subsequently informed that the hiring action was not going to be completed and that management was going to do something else with that position. HUD-OIG's review disclosed that the vacancy certificate that was signed by the selecting official was altered to reflect that no one was selected for the position. It was also noted that an OCIO official requested the cancellation of the vacancy certificate and announcement based on management's request. The OCIO official admitted that she altered the certificate because she did not want HUD's human resource office to inadvertently extend an offer for the cancelled vacancy.

Jackie Mercer-Hollie, HUD's former Assistant Director of Human Resources also committed nepotism by advocating the hiring of her husband, as an IT specialist within HUD's OCIO. The HUD-OIG investigation also determined that Mercer-Hollie's husband received preferential treatment and was pre-selected for this position. The

position announcement closed on a Thursday, the certification was issued and the selection was made on a Friday, and Mercer-Hollie's husband reported for work on the following Monday. Although it appears that all the rules and regulations were technically followed (announcement, certification, and selection), HUD-OIG obtained evidence (interviews and e-mails) indicating that Mercer-Hollie's husband was aware he was being hired at HUD prior to the selection and was given preferential treatment.

The investigation also determined that Mercer-Hollie also used her public office for private gain. Mercer-Hollie contacted a HUD contractor, who assisted her husband in obtaining a position with that contractor prior to his being hired at HUD. E-mails clearly show that the contractor (who is the nephew of Karen Jackson referenced earlier) hired Mercer-Hollie's husband as a "favor" because his wife was a "high official at HUD," and the position was short term because Mercer-Hollie's husband would soon be hired by HUD. An e-mail was discovered from Mercer-Hollie to Jackson in which Mercer-Hollie wrote, "Thanks for being my angel and contacting your nephew to facilitate getting my husband a job."

The results of our investigation were coordinated with DOJ. DOJ was presented with the facts and circumstances surrounding the investigations involving the alleged nepotism and prohibited personnel practices by HUD employees, including members of the Senior Executive Service (SES). DOJ was also made aware of the possible obstruction of this investigation by Payne. Based on the information provided, DOJ declined criminal prosecution, stating the information presented did not meet the criteria for a conflict of interest prosecution in the District of Columbia. DOJ deferred to HUD to pursue administrative remedies which were imposed as follows:

- **Payne** was issued a proposed termination notice in January 2012 but was allowed to resign in lieu of termination and transferred to another federal agency.
- **Jackson** retired immediately after being interviewed by HUD-OIG.
- **Hopkins** was removed from the SES and her federal employment was terminated effective November 2011.
- **Mercer-Hollie** was issued a 14 day suspension and was reassigned to the position of Director of Employee-Labor Relations at HUD's Atlanta, GA office.

* * * * *

Charles Hester, former Director, of HUD's Office Multifamily Housing in St. Louis, Missouri, accepted four payments totaling $38,000 from a multifamily project owner to facilitate and approve a Federal Housing Administration (FHA) Insured Multifamily loan. The initial loan was in the amount of $1.39 million, which was amended and increased by Hester to $1.5 million; a month later he received a $15,000 cashier's check from the owners. The investigation determined that after a private lender failed to approve a loan for the project, Hester facilitated the underwriting and processing of the FHA-insured loan. Hester directed HUD staff to sign certain loan documents and he approved a waiver allowing the use of letters of credit in lieu of a cash down payment. Hester also facilitated the waiver of certain property inspections (thereby allowing for the first construction draw to be paid to the owners). The owners, in turn, provided a portion

of the proceeds back to Hester. Hester subsequently deposited these funds into his personal checking account and spent them on personal expenses, including an investment property.

Hester was interviewed by HUD-OIG investigators where he admitted to receiving money from the owners, but denied committing any crimes. On the same day, Hester was placed on administrative leave by HUD. Hester never came back to work and subsequently retired effective November 2011. In April 2012, Hester was indicted for Conspiracy to Solicit and Accept an Illegal Gratuity and False Statements. He pled guilty to conspiracy to provide and accept an illegal gratuity and was sentenced to 18 months incarceration followed by 24 months of supervised release. The owners also pled guilty to various offenses, were imprisoned and were debarred from participation in procurement and non-procurement transactions as a participant or principal with HUD and throughout the executive branch of federal government for a period of 36 months.

* * * * *

Two recent and separate HUD-OIG investigations of PIH staff related to their misuse of their HUD positions by engaging in outside employment while on official government time. In the first case, the employee admitted to conducting business for her trucking company for several years while at HUD while on government time, and utilizing government equipment. The employee used her government computer and printer, as well as her government e-mail for business purposes. The employee visited numerous websites for her trucking business and maintained business documents on her HUD-issued computer. This employee received a 13 days suspension. According to the employee's personnel action history report, just days after returning to duty from her first week of suspension, she received a cash award. In addition, just over two weeks after returning to duty from her second week of suspension, she received a time off award. She also received a performance based cash award later that same year.

A second HUD employee also misused his HUD position by engaging in outside employment for several years, while on official government time, using HUD property. This case was more serious in that the employee also misrepresented himself as on official HUD business while conducting activities for personal gain. For several years, the employee spent approximately two to three hours per day working on outside businesses while on official government time and misused his HUD e-mail account approximately three to five times per day. The employee misused his HUD-issued e-mail account to mislead people into thinking his official HUD e-mail indicated he was representing HUD. The employee did this in an attempt to receive compensation. His business ventures included soliciting funds from landlords for referring lists of potential tenants, coaching a basketball team, providing women as entertainment for a private party in return for payment, and other real estate investments. This employee received a 30 day suspension. According to the employee's personnel action history report, within two months of returning to duty, he received a performance based cash award. He also received a special cash award within eight months of returning to duty.

During an interview with HUD-OIG investigators, the employee made false statements concerning the number of e-mails he sent in connection with outside business ventures. He originally stated that he only sent five to ten e-mails from his HUD account, but when confronted with e-mail evidence he changed his statement and admitted to sending approximately three to five e-mails per day over a six-year period.

Both of these cases were presented to DOJ for criminal prosecution and, in both cases, DOJ declined citing that HUD had administrative remedies it could impose. Neither of these employees lost their job as a result of the serious misconduct that had occurred over an extended period of time.

* * * * *

Lastly, I will discuss four OIG cases that serve to illustrate HUD's reluctance in these matters to take strong administrative action that could serve as a deterrent to future misconduct and create an ethical environment in the workplace. Even in one of the instances when HUD ultimately decided to terminate the employee, an unacceptable amount of time transpired and the employee had been on paid administrative leave.

In the first case, an official in HUD's Office of Congressional and Intergovernmental Relations misused his government travel card. The travel card had a balance in excess of $10,000, despite the employee receiving over $4,000 in reimbursement, and the employee made numerous purchases which did not occur during official travel, and attempted to make two payments on the card using checks that were drawn on accounts with insufficient funds. This resulted in the travel card account being closed. As a "Schedule C" employee, HUD could have easily terminated his employment. However, he was allowed to resign in lieu of termination. He was subsequently re-hired as the staff director of a congressional subcommittee. In September 2013, the former HUD employee was indicted in DC Superior Court on charges that he sexually assaulted two women after drugging them with a sedative that he allegedly put in their drinks. He was charged with 10 counts of first- and second-degree sexual abuse and related charges in connection with the attacks that authorities said occurred between July and December 2010. In December 2014, he pleaded guilty to third-degree sexual abuse, two misdemeanor counts of sexual abuse and one count of misdemeanor threats.

In the second case, a HUD employee was found to have been sending explicit obscene text messages to other HUD employees as well as to individuals from the employee's former employer. The employee also improperly used his HUD position and access to a computer database to obtain personal information about these individuals. The employee was arrested in June 2012 and HUD was notified within a few days of the arrest so that administrative action could be pursued. In September 2013, the employee pled guilty in state court to three counts of stalking; two counts of threatening to commit a crime which will result in death or great bodily injury to another person; and one count of unauthorized access to computers. HUD was notified of the guilty plea the day after it was entered and the HUD official advised that the information would be shared with HUD OGC to initiate termination proceedings. In October 2013, the employee was sentenced to three years in state prison for these offenses with all sentences to run

concurrently. In a third case, a HUD employee was investigated by HUD-OIG concerning three separate incidents where the employee (1) between 1999 and 2004, attempted to sexually assault a female employee at his residence and later sexually harassed the same individual after she became a HUD employee, for which she received a HUD settlement; (2) in 2006, sexually assaulted two female HUD employees on separate occasions, and; (3) in 2012, harassed a female HUD employee in a sexual manner. The cases were declined by DOJ and the State for criminal prosecution, primarily because of the expiration of the relevant statute of limitations for the first two sexual assault related crimes, and the third sexual assault did not meet their prosecutorial threshold. When HUD was presented with the results of the investigation, the employee received no disciplinary action from HUD, but instead received "verbal counseling."

A fourth employee displayed various serious behavioral issues that were potentially threatening to other HUD employees. Based on a February 2013 incident and the employee's alleged history of erratic behavior, HUD-OIG initiated an investigation to examine the employee's alleged behavioral issues, and to assist HUD management with information critical to safeguard HUD programs and its employees. HUD-OIG's interviews of the employee's co-workers indicated that the employee had been acting strangely (i.e., slurred speech, inability to balance himself, paranoia, delusional, acting confused, erratic and disoriented, and deteriorating work performance) during the previous three to four years. Some of the staff voiced their concerns to the employee's immediate supervisor, but nothing was done about the employee. The investigation was completed in September 2013 and the findings were communicated to HUD management. The most serious issue raised was an arrest for discharging a firearm into an occupied structure, burglary, unlawful discharge of a firearm, and owning/possessing a concealable weapon without registration. The local police report indicated that the employee went to his neighbor's house armed with a handgun, peeked over the fence, and fired one round into his backyard and struck an empty house. According to the police report, the employee was disheveled, extremely nervous, having a difficult time understanding basic verbal commands and appeared very delusional.

In December 2013, the employee entered a "nolo contendere" plea in local court to one count of misdemeanor possession of an unregistered firearm. He was initially charged with one felony count of discharging a firearm into an occupied structure. As a result of his plea, the employee was ordered to pay a $500 fine, attend mental counseling, and forfeit all of his firearms. It was not until one year later, in December 2014, that HUD finalized its decision to terminate the employee's employment. It should also be noted that the employee was on paid administrative leave from March 2013 through December 2014.

In closing, these actions by a small group of HUD employees detract from what my experience has shown to be the norm -- that is that the vast majority of HUD employees are hardworking, dedicated civil servants. It is a fact that poor actions and behavior are human nature and will occur throughout any industry or entity – private or government. HUD is not alone. However, what I believe is important, is what you do after such behavior is detected to discipline and to create an ethical culture in the workplace. Yet one cannot ignore the fact that for the past several

years, HUD has consistently ranked near the bottom in annual surveys of the most desirable federal agency in which to work. Misconduct and unethical behavior, particularly by high ranking officials does not, in my view, serve to enhance this unfavorable image. Employee morale also suffers when employees observe that misconduct is not dealt with and the offending employees are allowed to remain in their positions virtually unpunished. According to a 2013 National Business Ethics Survey conducted by the Ethics Resource Center, when employees observe misconduct on the job, their engagement drops by nearly 30 percent.

Indeed many of these cases have come to us by conscientious employees who are frustrated by a lack of will by management to address these improprieties. In some of these cases, we see a failure to adhere to existing policies and procedures or we see a breakdown in responsibility. Particularly troubling to me is that when information is withheld from OIG agents or employees demonstrate a lack of candor with, or even threaten OIG agents, HUD's management response is sometimes inconsequential.

I do, however, want to express my appreciation for Secretary Castro's efforts to encourage HUD employees to cooperate with the OIG. Shortly after coming on board, he issued a jointly signed letter with me to all HUD employees outlining his expectations. The letter, in part, states:

> *"The Office of the Inspector General (OIG) is essential to this work. OIG prevents and detects inefficiencies and wrongdoing by conducting independent and objective audits, investigations, and evaluations to improve HUD's operations. HUD employees are critical in this process. The OIG routinely needs information from Department offices to conduct its work effectively. Without full, complete and timely access to all information related to HUD programs and activities, OIG cannot fully determine how HUD is, or the recipients of funding from HUD are, fulfilling their respective responsibilities... HUD employees must take an active role in supporting the OIG's activities. This should be a collaboration that is built on mutual respect, professionalism and a shared mission to serve the American people. One way we do that is for HUD personnel to produce materials requested by the OIG in a timely and complete fashion. We want to be clear that there is no basis for withholding any information from OIG when requested. ...all HUD employees have a responsibility to report instances of fraud, waste and abuse directly to the OIG. All managers should respect employees' rights to speak directly and confidentially with the OIG, and refrain from inappropriate activity that might inhibit an employee or contractor's cooperation."*

I look forward to working with the Department and the Congress to ensure that HUD programs and personnel operate in an effective and ethical manner.

United States Government Accountability Office

GAO

Testimony
Before the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives

For Release on Delivery
Expected at 10:00 a.m ET
Wednesday, February 4, 2015

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Violation of Anti-Lobbying Provision and the Antideficiency Act

Statement of Edda Emmanuelli Perez,
Managing Associate General Counsel
Office of General Counsel

Chairman Duffy, Vice Chairman Fitzpatrick, Ranking Member Green, and members of the subcommittee:

I am GAO's Managing Associate General Counsel responsible for GAO's appropriations law decisions and opinions. I am pleased to be here today to discuss our September 9, 2014, opinion concerning the Department of Housing and Urban Development's (HUD) use of appropriations to prepare and transmit an e-mail encouraging members of the public to contact specific senators regarding pending legislation.[1] A copy of the opinion can be found in the appendix to this statement.

In the opinion, we determined that HUD violated an appropriations provision prohibiting the use of appropriated funds for indirect or grassroots lobbying in support of or in opposition to pending legislation. Because no funds were available for such purpose, HUD's actions also violated the Antideficiency Act, a fiscal statute central to Congress's constitutional power of the purse.

As you may know, GAO provides legal decisions and opinions to Congress, its committees and Members, and federal agency officials.[2] This function is different from GAO's more widely-known audits and investigations.[3] Our authority to issue appropriations law decisions and opinions is drawn from the Comptroller General's authority to settle the accounts of the United States and a statutory direction to issue decisions upon the request of certain federal officials in advance of a payment of appropriated funds.[4] Our decisions and opinions are informed by facts and views that we solicit from the agency whose appropriation is at issue in the opinion. All of our decisions and opinions are publicly available on our Web site, www.gao.gov/legal.

[1] B-325248, Sept. 9, 2014. *Reprinted in* Appendix I.

[2] GAO, *Principles of Federal Appropriations Law*, Vol. I, 3rd ed., ch. 1, § C.2, GAO-04-261SP (Washington, D.C.: Jan. 2004). GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html.

[3] *See* 31 U.S.C. § 712. Congress provides GAO with general authority to investigate the receipt, disbursement, and use of public funds, as well as other, more specific audit authorities. *Id.*

[4] 31 U.S.C. §§ 3526–3529.

In this instance, we received a request for an opinion from Representative McHenry, this subcommittee's previous Chairman. Representative McHenry expressed concern about an e-mail sent by the Deputy Secretary of HUD to "friends and colleagues" on July 31, 2013. He asked GAO whether HUD violated any anti-lobbying provisions by transmitting the e-mail.

Section 716 of the Financial Services and General Government Appropriations Act, 2012, which was carried forward by the Consolidated and Further Continuing Appropriations Act, 2013, prohibits the use of appropriated funds for indirect or grassroots lobbying in support of or in opposition to pending legislation.[5] Specifically, the prohibition states as follows:

> "No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."[6]

As agreed upon with our requesters, we relied on the facts as determined through the investigation into this matter conducted by HUD's Office of Inspector General (OIG), as well as information that HUD provided to the subcommittee. We learned that the e-mail in question transmitted by the Deputy Secretary of HUD requested that recipients contact 17 named senators in support of the Senate's version of the Department of Transportation, HUD, and Related Agencies appropriations bill for fiscal year 2014, which was pending in the Senate at the time. The e-mail emphatically urged recipients to encourage the senators to vote in favor of procedural motions to advance consideration of the bill, to oppose specific amendments HUD considered harmful to the bill, and to vote in support of the bill itself. Among the over 1000 recipients of the Deputy

[5] Pub. L. No. 112-74, div. C, title VII, § 716, 125 Stat. 786, 933 (Dec. 23, 2011), *as carried forward by* Pub. L. No. 113-6, div. F, title I, §§ 1101(a)(2), 1102, 1105, 127 Stat. 198, 412–13 (Mar. 26, 2013).

[6] Pub. L. No. 112-74, § 716.

Secretary's e-mail, were individuals from organizations that have engaged with HUD on housing issues, whose contact information HUD retained in the ordinary course of its work.

We concluded that HUD violated section 716 by preparing and transmitting the e-mail. The appropriations provision prohibits indirect or grassroots lobbying urging support or opposition of legislation pending before Congress. Therefore, the provision is violated when there is evidence of a clear appeal by an agency to the public to contact Members of Congress in support of or in opposition to pending legislation. Here, the Deputy Secretary's e-mail made several clear appeals to the public to contact Members of Congress regarding HUD's pending appropriations bill.

HUD did not deny that it engaged in grassroots lobbying. Rather, HUD emphasized that the e-mail was sent by its Deputy Secretary, who is a Presidentially-Appointed and Senate-Confirmed (PAS) official. Noting that the Department of Justice's (DOJ) Office of Legal Counsel (OLC) has opined that a similar anti-lobbying provision enforced by DOJ, 18 U.S.C. § 1913, does not restrict the activities of certain executive branch officials—a position on which some federal agencies have relied to determine that lobbying restrictions contained in appropriations laws also do not apply to PAS officials—HUD asserted that its Deputy Secretary's e-mail was consistent with this guidance, as it was sent by a PAS official. DOJ exempts certain executive branch officials from application of section 1913 in view of the advocacy nature of such positions, and, further, believes exemption is necessary to avoid interference with the President's constitutional powers. Nevertheless, DOJ does caution against such officials engaging in the sort of lobbying activity section 1913 was intended to prevent. As we stated in our opinion, we do not agree that the Deputy Secretary is exempt from the appropriations provision. While the provision would not prevent the Deputy Secretary from engaging in normal executive-legislative relationships or from communicating HUD's views directly to the public, there is a bright-line rule prohibiting a clear agency appeal to the public to contact Members of Congress in support of or in opposition to pending legislation.

By using its appropriated funds in violation of the prohibition, HUD also violated the Antideficiency Act. The Antideficiency Act is one of the major fiscal laws by which Congress enforces its constitutional control of the

public purse. The Antideficiency Act is a funds control statute designed to implement agency fiscal discipline. Under the Act, an officer or employee of the U.S. Government may not make or authorize an obligation[7] or expenditure exceeding the amount of an available appropriation.[8] The legal effect of section 716 is to make no funds available to HUD for indirect or grassroots lobbying regarding pending legislation. Accordingly, by obligating and expending funds to prepare and transmit the e-mail in question, HUD spent funds in excess of those available, therefore violating the Antideficiency Act. Executive agencies must report Antideficiency Act violations to the President and Congress, and transmit copies of their reports to GAO.[9] The Office of Management and Budget provides guidance to executive agencies on reporting violations.[10]

If you or your staff have any questions about this testimony, please contact me at (202) 512-2853 or EmmanuelliPerezE@gao.gov. Contact points for our Office of Congressional Relations and Office of Public Affairs may be found on the last page of this statement. Julie Matta, Assistant General Counsel, and Shari Brewster, Senior Staff Attorney, made key contributions to this statement.

Thank you, Mr. Chairman. This concludes my prepared statement. I would be happy to answer any questions that you or other members of the subcommittee have at this time.

[7] In federal fiscal law, an obligation is a "definite commitment that creates a legal liability of the government for the payment of goods [or] services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of [another] party beyond the control of the United States." GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 70.

[8] 31 U.S.C. § 1341.

[9] *Id.* § 1351.

[10] OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 4, § 145 (July 25, 2014). To date, we are unaware that HUD has reported its Antideficiency Act violation.

Appendix I: GAO Opinion to the Chairman of the House Financial Services Subcommittee on Oversight and Investigations

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Comptroller General of the United States

United States Government Accountability Office
Washington, DC 20548

B-325248

September 9, 2014

The Honorable Patrick McHenry
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives

Subject: *Department of Housing and Urban Development—Anti-Lobbying Provisions*

Dear Mr. Chairman:

This responds to your request for our opinion concerning whether a July 31, 2013, e-mail communication (July 2013 E-mail) sent by the Deputy Secretary of the Department of Housing and Urban Development (HUD) to "friends and colleagues" violated any anti-lobbying provisions. *See* Letter from Chairman, Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives, to Comptroller General (Aug. 28, 2013) (Request Letter).

Section 716 of the Financial Services and General Government Appropriations Act, 2012, which was carried forward by the Consolidated and Further Continuing Appropriations Act, 2013, prohibits the use of appropriated funds for indirect or grassroots lobbying in support of or in opposition to pending legislation.[1] As explained below, we conclude that HUD violated section 716 by preparing and transmitting the July 2013 E-mail. Further, because section 716 prohibits the use of HUD's appropriation for grassroots lobbying, making any obligation of funds toward this purpose exceed available appropriations, we also conclude that HUD violated the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A), when it obligated and expended funds to prepare and transmit the July 2013 E-mail.

As agreed with your staff, we relied on information and legal views that HUD and HUD's Office of Inspector General (HUD OIG) provided the subcommittee. Letter

[1] The fiscal year 2012 prohibition applies to the July 2013 E-mail at issue here. Pub. L. No. 112-74, div. C, title VII, § 716, 125 Stat. 786, 933 (Dec. 23, 2011), *as carried forward by* Pub. L. No. 113-6, div. F, title I, §§ 1101(a)(2), 1102, 1105, 127 Stat. 198, 412–413 (Mar. 26, 2013).

from Acting Assistant Secretary for Congressional and Intergovernmental Relations on behalf of Secretary, HUD, to Chairman, Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives (Sept. 24, 2013) (HUD Response to Subcommittee); HUD Inspector General, *Report of Investigation*, Case No. 2013HQ0017441 (Feb. 18, 2014) (OIG Report). In accordance with our regular practice, we also contacted HUD to seek its legal views on this matter and any additional facts that it wished to provide. Letter from Assistant General Counsel for Appropriations Law, GAO, to Acting General Counsel, HUD (Apr. 15, 2014); *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/lawresources/resources.html. HUD, noting the OIG Report, told us it had "no further facts or analysis to add at this time." Letter from Acting General Counsel, HUD, to Assistant General Counsel for Appropriations Law, GAO (May 15, 2014) (HUD Response to GAO).

BACKGROUND

On July 31, 2013, the Deputy Secretary of HUD sent an e-mail to over 1000 recipients, including members of the public, requesting they contact named senators in support of the Senate's version of the Department of Transportation, HUD, and Related Agencies appropriations bill for fiscal year 2014 (Senate THUD Bill), then pending in the Senate. *See* OIG Report, at 1, Ex. A. Specifically, the July 2013 E-mail asked recipients to contact named senators to encourage them to vote in favor of procedural motions to advance consideration of the bill. Request Letter, at 1. The e-mail also asked recipients to encourage the senators to oppose specific amendments to the bill and to vote in support of the Senate THUD Bill itself. OIG Report, at Ex. A.

The July 2013 E-mail followed a number of communications that HUD's Deputy Secretary previously had with "stakeholders"[2] in an effort to advance final passage of the bill. *Id.*, at Memorandum of Interview (MOI) 5, 10, 12, 13. HUD described the July 2013 E-mail recipients as "individuals from organizations that work on housing issues related to HUD's programs . . . [who] generally have engaged and communicated with HUD on housing issues . . . ." HUD Response to Subcommittee, at 1-2. HUD noted that it had retained contact information for these people throughout the ordinary course of its work. *Id.*, at 2.

[2] The term "stakeholders" was described in one HUD OIG interview as "elected officials, non-elected officials, Mayors, Senators, etc." OIG Report, at MOI 5.

The July 2013 E-mail encouraged "friends and colleagues" to take specific actions concerning the Senate THUD Bill.[3] Of note, the e-mail stated:

> "TODAY AND TOMORROW are critical because it is the last chance for the Senate THUD bill to be voted on before Congress goes on August recess. We are once again facing a critical cloture motion vote tomorrow to end the debate. I am humbly asking you to let your Senators especially the ones listed below know how important it is that the cloture motion passes so that the Senate THUD bill MOVES FORWARD to a vote and TO VOTE for the Senate THUD bill.
>
> "It is critical that your Senator hears from you NOW. Specifically, we need to maintain the current level of Republican support for the Senate THUD FY14 appropriations bill, acquire other Republican supporters and ensure vocal and active support from Democratic Senators. Please ask them:
>
> - to vote YES tomorrow on the cloture motion to end the debate and to vote YES on the merits of the bill when it comes up for a vote[.]
> - to defend against efforts by some Republicans to prevent the underlying bill from coming up for a vote or to enact harmful amendments such as those that would cut some of the important funding in the bill.
> - for example, Senators should vote 'No' against Senator Coburn's Amendment 1754 which would have a devastating effect on our homeless population."

OIG Report, at Ex. A (emphasis in original). The e-mail went on to list 17 senators on whom the recipients should focus their attention. *Id.* The senators named in the July 2013 E-mail were chosen based on their demonstrated support for the Senate THUD Bill. *Id.*, at MOI 6.

DISCUSSION

At issue here is whether the July 2013 E-mail sent by HUD's Deputy Secretary constitutes a violation of the governmentwide prohibition against grassroots lobbying

[3] Another e-mail thanking the recipients for their support, providing further status updates on the Senate THUD bill, and encouraging recipients to continue to "make [their] voices heard" during the August recess was sent by the Deputy Secretary on August 5, 2013. OIG Report, at Ex. B. This opinion does not evaluate the propriety of the August 5 e-mail.

contained in section 716 of the Financial Services and General Government Appropriations Act, 2012, and carried forward by the Consolidated and Further Continuing Appropriations Act, 2013. Pub. L. No. 112-74, § 716; Pub. L. No. 113-6, §§ 1101(a)(2), 1102, 1105.

Section 716 provides as follows:

> "No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."

We have interpreted similar appropriations act language as prohibiting indirect or grassroots lobbying that is urging support or opposition of legislation currently pending before Congress. The prohibition is violated where there is evidence of a clear appeal by an agency to the public to contact Members of Congress in support of, or in opposition to, pending legislation. B-322882, Nov. 8, 2012. Our interpretation is derived from the statutory language as well as the legislative history of grassroots lobbying prohibitions and is consistent with a proper respect for an agency's right to communicate with the public and Congress about its policies and activities. *See* B-304715, Apr. 27, 2005; B-270875, July 5, 1996; B-192658, Sept. 1, 1978.

On its face, the July 2013 E-mail makes several clear appeals to the public to contact Members of Congress regarding pending legislation. According to the e-mail, the Senate THUD Bill, which would have provided substantially more funding for HUD than the House alternative, was being considered on the Senate floor on July 31, 2013. OIG Report, at Ex. A. HUD's Deputy Secretary sought to encourage final passage of the bill without amendments HUD considered harmful to the agency before Congress went into August recess. *Id.* Using statements including "I am humbly asking you to let your Senators . . . know," "[i]t is critical that your Senator hears from you NOW," and "[p]lease ask them: to vote YES," the Deputy Secretary urged recipients to contact 17 named senators—immediately—regarding the Senate THUD bill. *Id.*

Among the recipients of the July 2013 E-mail were members of the public. *See* HUD Response to Subcommittee, at 1–2. Accordingly, this action constitutes a clear, direct appeal to the public regarding pending legislation. *Compare* B-285298, May 22, 2000 (e-mail sent to interested farmers' organizations noting that Congress needed to hear from farmers in their district in regards to pending legislation was found, on its face, to be a clear appeal) *with* B-304715 (no violation where

communication merely consisted of language likely to influence the public to contact members of Congress, absent a clear appeal).

By its terms, section 716 applies to communication "designed to support or defeat legislation pending before the Congress." Pub. L. No. 112-74, § 716. It does not restrict "normal and recognized executive-legislative relationships," nor does it apply to agency communications "in presentation to Congress itself." *Id.* We have acknowledged that anti-lobbying provisions like section 716 do not restrict the ability of agency officials to voice their position on matters of public policy by direct appeals to Congress, nor do we interpret such provisions in a manner that unnecessarily constrains agency communication with the public on such issues. B-317821, June 30, 2009; B-270875. For example, we determined that HHS did not violate anti-lobbying provisions through its Web site, *HealthReform.gov*. B-319075, Apr. 23, 2010. The Web site contained information regarding the Administration's stance on health care reform, including a forum for the public to provide comments, and a *State Your Support* Web page, which allowed users to sign a letter supporting the President. *Id.* It did not contain a direct appeal to the public to contact Members of Congress in support of pending legislation. *Id.*

However, HUD's July 2013 E-mail does not just convey the agency's position with regard to the Senate THUD Bill; it directly urges the public to contact specific senators regarding pending legislation and provides several points for recipients to emphasize. For example, the recipients were urged to implore the senators to "vote YES tomorrow on the cloture motion," "vote YES on the merits of the bill," and "vote 'No' against Senator Coburn's Amendment 1754." OIG Report, at Ex. A (emphasis in original).

HUD does not deny that it appealed to the public to contact named senators regarding pending legislation.[4] Rather, HUD emphasized that the July 2013 E-mail

[4] Historically, HUD has acknowledged the anti-lobbying provisions, such as section 716, found in appropriation acts, and at least one official in HUD's Office of General Counsel (HUD OGC) acknowledged that the "2012 appropriations act prohibits PAS [Presidentially-Appointed and Senate-Confirmed] and other HUD employees from lobbying once a bill is pending before Congress." OIG Report, at Ex. G. HUD's policy in July 2013 reflected the position that an anti-lobbying provision similar to the one at issue here prohibited PAS officials and other employees from urging others to contact members of Congress in support or in opposition to pending legislation. OIG Report, at 5–6, Ex. E. This same position was also reflected in a 2011 memo to PAS officials regarding anti-lobbying restrictions. OIG Report, at Ex. F. Following the congressional inquiry to HUD regarding the July 2013 E-mail, HUD revised its anti-lobbying policy. While the revised policy noted PAS officials must consult HUD OGC prior to engaging in grassroots lobbying, it eliminated prior acknowledgment

(continued...)

was transmitted by its Deputy Secretary, who is a Presidentially-Appointed and Senate-Confirmed (PAS) official. HUD Response to Subcommittee, at 1. HUD explained that a Department of Justice (DOJ) Office of Legal Counsel (OLC) memorandum opined that 18 U.S.C. § 1913, a lobbying prohibition that is enforced by DOJ, does not apply to PAS officials.[5] Section 1913 states in part that "[n]o part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, . . . [,]" be used in the manners prohibited by the statute. In a 1989 memorandum, DOJ OLC provided guidance on the extent to which section 1913 constrains the lobbying activities of the executive branch. 13 Op. Off. Legal Counsel 300 (1989). It construed section 1913 to exempt certain officials, including, for example, the President, his aides and assistants within the Executive Office of the President, and Cabinet members. *Id.*, at 303. It stated that Congress "expressly authorized"[6] the lobbying activities of such officials by its continued appropriation of funds for positions whose responsibilities historically include seeking support for the Administration's legislative program. *Id.*, at 302–03. DOJ OLC further explained that to apply section 1913 to such officials would interfere with the President's constitutional powers, making a narrow construction appropriate. *Id.*, at 304–06.

Notably, however, DOJ OLC cautioned against these officials engaging in the sort of grassroots lobbying campaigns section 1913 was intended to prevent. 13 Op. Off. Legal Counsel at 303 n.5. *See also* Memorandum Opinion for the General Counsel, Department of Commerce, *Application of 18 U.S.C. § 1913 to "Grass Roots" Lobbying by Union Representatives*, OLC Opinion, at 7 n.6, Nov. 23, 2005, *available at* http://www.justice.gov/olc/memoranda-opinions/index.php. In particular, DOJ OLC, addressing a factual scenario similar to that presented here, noted that legislative history demonstrates that by enacting section 1913, Congress sought to prevent department heads from using appropriated funds for grassroots "mass-mailing" campaigns to "create artificially the impression that there [was] a ground swell of public support for the Executive's position on a given piece of legislation." 13 Op. Off. Legal Counsel at 304. DOJ OLC distinguished such activity from the permissible action of an agency openly engaging with the public regarding such policies to generate support. *Id. See also* OLC, *Guidelines on 18 U.S.C. § 1913*, at 1 (Apr. 14, 1995).

(...continued)
that anti-lobbying provisions similar to section 716 applied to their activities. *Compare* OIG Report, at 7, Ex. H, *with* OIG Report, at Ex. E.

[5] Section 1913 was originally enacted as a criminal provision, but was amended in 2002 to replace criminal sanctions with civil penalties. *See* B-319075.

[6] This "express authorization" exception was derived from the clause in section 1913, "in the absence of the express authorization by Congress, ..."

HUD, noting DOJ OLC's position on section 1913, stated that "[f]ederal agencies under both Democratic and Republican administrations have relied on OLC's opinion in guidance stating that neither . . . [section 1913] nor the appropriations laws' restrictions on lobbying apply to the activities of . . . [PAS] officials." HUD Response to Subcommittee, at 1. Without reference to DOJ OLC's caution, HUD wrote regarding the July 2013 E-mail, "[c]onsistent with the . . . opinions and guidance [of DOJ OLC and these agencies] the email . . . was a communication from the Deputy Secretary—a 'Presidentially-appointed, Senate-confirmed official.'" *Id.*

We disagree with HUD's position that the Deputy Secretary is exempt from section 716. On its face, section 716 would exempt the Deputy Secretary to the extent he were engaging in normal executive-legislative relationships.[7] We have consistently found that under these types of appropriations restrictions, agency officials have broad authority to educate the public on their policies and views, and this includes the authority to be persuasive in their materials.[8] However, with regard to an appropriations act prohibition like that found in section 716, there is a bright-line rule: evidence of a clear agency appeal to the public to contact members of Congress in support of or in opposition to pending legislation is a violation of this prohibition. B-322882, at 4. There is clear evidence of such an appeal to the public in this case.

CONCLUSION

HUD's July 2013 E-mail that urged members of the public, to contact named U.S. senators in support of the Senate THUD Bill constitutes improper grassroots lobbying. HUD violated section 716 when it obligated and expended appropriated funds to prepare and transmit the July 2013 E-mail.[9] Under the Antideficiency Act,

[7] This is not the first time we have applied anti-lobbying provisions to PAS officials. *See, e.g.*, B-284226.2, Aug. 17, 2000; B-216239, Jan. 22, 1985.

[8] *See, e.g.*, B-317821, June 30, 2009 (noting that agency officials "may meet with interested groups or otherwise share information with them"); B-304715, Apr. 27, 2005 (individual social security statements mailed to over 140 million Americans that included a message concerning the need for action to ensure the continued viability of the system and noted that "Congress has made changes to the law in the past and can do so at any time," did not constitute grassroots lobbying); B-301022, Mar. 10, 2004 (letter from the Deputy Director of the Office of National Drug Control Policy encouraging prosecutors to work with legislators to update local marijuana laws was considered a legitimate informational activity).

[9] HUD OIG did not calculate the cost associated with the July 2013 E-mail, only noting that it "appears to fall short of the $50,000 threshold [used by DOJ to

(continued...)

an officer or employee of the federal government may not make or authorize an obligation or expenditure in excess of the amount available in an appropriation. 31 U.S.C. § 1341(a). Accordingly, any obligation or expenditure of appropriated funds for a purpose specifically prohibited by Congress is in excess of the amount available. B-321982, Oct. 11, 2011. HUD should report its Antideficiency Act violation as required by law.[10] 31 U.S.C. § 1351.

If you have any questions, please contact Edda Emmanuelli Perez, Managing Associate General Counsel, at (202) 512-2853 or Julie Matta, Assistant General Counsel, at (202) 512-4023.

Sincerely,

Susan A. Poling
General Counsel

(...continued)
determine whether a grassroots lobbying campaign violates 18 U.S.C. § 1913]." OIG Report, at 4. According to the interviews conducted by HUD OIG, staff from several offices (who were not PAS officials) collaborated to prepare the e-mail that was sent by the Deputy Secretary, including the Office of Public Engagement and HUD's Congressional & Intergovernmental Relations team. *Id.*, at MOI 2, 3, 5, 6, 12.

[10] The Office of Management and Budget has published guidance on how executive agencies should report Antideficiency Act violations. OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 4, § 145 (July 26, 2013).

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Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

provide for the safe use of humate, fulvic acid and humic substances as a source of iron in animal feed.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by February 5, 2015.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David Edwards, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9568.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2290) has been filed by the Humic Products Trade Assn., P.O. Box 963, Spring Green, WI 53588. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of humate, fulvic acid and humic substances as a source of iron in animal feed. The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r).

Interested persons may submit either electronic comments regarding this request for categorical exclusion to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **DATES** and **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: December 30, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–30932 Filed 1–5–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 574, 960, 966, 982, 983, and 990

[Docket No. FR 5743–P–01]

RIN 2506–AC38

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: Section 243 of the Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act), authorized HUD to implement certain statutory changes to the United States Housing Act of 1937 (1937 Act) made by the 2014 Appropriations Act through notice, followed by notice and comment rulemaking. Notices implementing the changes were published on May 19, 2014, and June 25, 2014. Consistent with statutory direction, this proposed rule commences the rulemaking process to codify in regulation the statutory changes made to the 1937 Act by the 2014 Appropriations Act and to solicit comment on HUD's implementation of these changes through the published notices. HUD intends to address the FY14 provision on consortia through separate rulemaking.

In addition, this rulemaking also proposes changes to streamline regulatory requirements pertaining to certain elements of the Housing Choice Voucher (HCV), Public Housing (PH), and various multifamily housing (MFH) rental assistance programs; to reduce the administrative burden on public housing agencies (PHAs) and MFH owners; and to align, where feasible, requirements across programs. One of the proposed changes would also affect the HOME Investment Partnerships program, Continuum of Care program, and the Housing Opportunities for Persons With AIDS (HOPWA) program which are administered by HUD's Office of Community Planning and Development.

DATES: *Comment Due Date:* March 9, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (none of the phone numbers are toll-free):

HOME program: Marcia Sigal, 202–402–3002.

HOPWA: Will Rudy, 202–402–1934.

Office of Special Needs Housing programs: Brett Gagnon, 202–402–3509.

Multifamily Housing programs: Claire Brolin, 202–708–3000.

Housing Choice Voucher program: Becky Primeaux, 202–402–6050.

Public Housing program: Todd Thomas, 202–402–5849.

Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Any of the above-listed contacts may also be reached via postal mail at the following address: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years and in accordance with Executive Order 13563 (Improving Regulation and Regulatory Review)[1] and several HUD-initiated streamlining initiatives,[2] HUD solicited recommendations from program participants on how program operations could be streamlined to reduce costs and enhance efficiency, while still maintaining HUD's core program oversight functions (*e.g.*, reducing improper payments,[3] etc.). With respect to public housing programs, HUD received input from national and local industry groups, individual public housing agencies (PHAs), and Moving-to-Work (MTW) agencies, among others. Where possible, HUD has sought to streamline requirements across programs, with a particular focus on aligning program requirements across the public housing and Section 8 (tenant- and project-based) portfolios. This proposed rule therefore includes several provisions where the requirements of programs operated out of the Office and Public and Indian Housing are aligned with the requirements of project-based Section 8 programs operated out of HUD's Office of Housing.

In response to HUD's solicitation of comments, HUD received many recommendations. Among these recommendations, HUD specifically examined recommendations to relieve the administrative burden on PHAs and MFH owners while maintaining important tenant protections and oversight practices. Some of the recommendations required statutory change and were included in recent budget proposals; several of the recommendations were enacted in FY14 and are being implemented through this proposed regulation. Others have been implemented through notice; for example, Notice PIH 2013–03[4] (extended by Notice PIH 2013–26) provides temporary compliance assistance to PHAs through several provisions that are proposed to be made permanent through this rulemaking. Some of the statutorily permitted recommendations lacked authority to be implemented by notice and are included in this proposed rule.

In addition to the PH and HCV programs, this proposed rule would affect the following MFH programs, as of the date of this proposal:

A. *Project-Based Section 8* (New Construction, State Agency-Financed, Substantial Rehabilitation, Rural Housing Services, Loan Management Set-Aside, and Property Disposition Set-Aside).

B. *Section 8 Moderate Rehabilitation.*

C. *Rent Supplement Program.*

D. *Section 202 Supportive Housing for the Elderly* (including PAC and PRAC).

E. *Section 811 Supportive Housing for Persons with Disabilities* (including PRAC and PRA).

F. *Section 235.*

G. *Section 236.*

H. *Section 221.*

The proposed rule would also affect certain programs administered by the Assistant Secretary for Community Planning and Development: HOME Investment Partnerships program (HOME) and the Continuum of Care program. HUD is also taking the opportunity afforded by this proposed rule to relocate HOPWA program requirements currently codified in 24 CFR part 5 to the main HOPWA program regulations at 24 CFR part 574. Although the substance of these provisions would not be revised, the proposed relocation will improve the clarity of the program regulations by locating all HOPWA regulatory requirements in a single part of the Code of Federal Regulations. The section-by-section summary of this proposed rule is organized by the program(s) the proposed rule would affect. Section A addresses proposed regulatory changes that cross all programs (*e.g.*, HCV, MFH, and PH). Section B presents proposed changes that would affect the administration of both the HCV and PH programs. Section C contains proposed changes that affect the PH program only. Changes proposed only to the HCV program are in section D.[5] The proposed regulatory changes are then presented in order by section number.

II. This Proposed Rule—Section-by-Section Proposed Changes

A. HCV, MFH, and PH Program Regulations

Verification of Social Security Numbers (§ 5.216)

Under current regulations, most applicants are required to have a Social Security Number (SSN) at move-in. Absent a regulatory waiver, this requirement results in an applicant family being denied assistance if the addition of a child occurs in close proximity to the applicant's move-in date and the family is unable to obtain a SSN for the child, due to circumstances beyond its control. By contrast, HUD regulations provide for the addition to a participant family of a new household member under the age of 6 years who has no assigned SSN.

HUD proposes to align the requirements across applicant and participant households with respect to new household members under the age of 6 years who lack SSNs. Specifically, HUD proposes to authorize applicant households to become program participants even if a child under the age of 6 years is added to the household within the 6-month period prior to the household's date of admission and that child has not yet been issued an SSN. The household would have 90 days from the date of move-in to provide the documentation evidencing issuance of an SSN. As is the case with program participants, an extension of one 90-day period would be required for assistance applicants under certain circumstances.

Definition of Extremely Low-Income Families (§§ 5.603, 960.102)

HUD's 2014 Appropriations Act[6] defines the term "extremely low-income family" to mean a very low-income family whose income does not exceed the higher of 30 percent of area median income or the poverty level. This rule would amend § 5.603 to include the revised definition of an extremely low-income family. This definition applies

[1] See *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

[2] HUD's Delivering Together Initiative was started to reduce burdens on public housing agencies and improve cross-program collaboration (see *http://www.hud.gov/offices/hsg/mfh/trx/meet/2011tracsindustrybriefing.pdf*). The Public Housing Administrative Reform Initiative sought to identify public housing administrative processes that could be streamlined (see *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phari*).

[3] The Rental Housing Integrity Improvement Project (see *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip*) is a strategy designed to reduce income and rent calculation errors and improper payments that result from such errors.

[4] See *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2013-03.pdf.*

[5] One of the proposed changes also affects the CPD programs listed earlier.

[6] HUD's 2014 Appropriations Act is Title II of Division L of Public Law 113–76, 128 Stat. 5, approved January 17, 2014. See general provision section 238 of this Act at 128 Stat. 635.

to all programs assisted under the 1937 Act.

In addition to the change in the definition, this rule proposes to correct some improper cross-citations in §§ 5.603 and 960.102, but proposes no substantive changes associated with these corrections.

Use of Actual Past Income (§ 5.609)

HUD's current regulations define "annual income" to mean income projected to be received in the 12 months following admission or the annual reexamination date. The process of projecting income introduces the potential for error.

This rule proposes to allow PHAs and MFH owners to define annual income as either actual past income or projected income. Actual past income would be based on amounts received prior to admission or the annual reexamination effective date and would therefore simply exclude the additional step of projecting income based on this information.

For PHAs, whichever definition is chosen for either the HCV or PH program must be applied to all families in the respective program. Likewise, a MFH owner must apply the same definition of annual income for all families in a single property.

If a PHA or MFH owner chooses to define annual income as actual past income, then it may not adopt the option provided in the proposed revisions to §§ 5.657, 960.257, and 982.516 to provide for the streamlined annual reexamination of fixed-income families (see below). In other words, if a PHA or MFH owner adopts the streamlined annual reexamination for families on fixed incomes, below, then it must use projected income to determine annual income. Also, the PHA must use projected income if the family makes a request (for example the family may have experienced a decrease in income that would result in a lower family payment than would be calculated if income is defined as actual past income).

Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

Current regulations provide that education assistance in excess of amounts needed for tuition is to be counted as income for the purposes of determining whether an individual is eligible to receive assistance. However, in recent years, appropriations acts have also excluded from income amounts needed to pay required fees charged to students as part of a growing trend among institutions of higher education moving from a traditional tuition-only structure to a structure of tuition and fees. Fees often include, but are not limited to, student service fees, student association fees, student activity fees, and laboratory fees.

HUD believes that including many of these fixed fees within the definition of tuition, in accordance with statutory instructions in recent years, will increase opportunities for its participants to further their education. Therefore, HUD is amending the definition of income with respect to higher education costs pursuant to the recent statutory changes.

Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516)

PHAs and MFH owners are statutorily required to verify income and calculate rent annually, including for families on fixed incomes. The requirement to undertake the complete process for income verification and rent determination for families on fixed incomes is not necessary given the infrequency of changes to their incomes. Further, this requirement consumes considerable staff time and resources.

HUD proposes to simplify the requirements associated with determining the annual income of families on fixed incomes by allowing PHAs and owners to opt to conduct a streamlined annual reexamination of income for families when 100 percent of the family's income consists of fixed income sources. In a streamlined annual reexamination, PHAs and owners will recalculate family incomes by applying a published cost-of-living adjustment (COLA) for the source of income to the previously verified income amount. If COLA information is not publicly available and cannot be provided by the tenant through a document generated by a third party, then the PHA or owner must follow the standard verification process to determine the appropriate adjustment for the fixed-income source. If a family has several sources of fixed income, then the PHA or owner must apply the respective COLA or verify the adjustment for each source.

Calculating adjustments to annual income (*e.g.*, medical deductions, child care deductions) is still required as part of the streamlined annual reexamination of income. PHAs must follow the requirements related to deductions for such expenses, including third-party verification of these deductions. Furthermore, PHAs using the streamlined annual reexamination of income may not exercise the option to use actual past income to determine annual income under § 5.609 (instead, they must use projected income).

B. HCV and PH Program Regulations

Utility Reimbursements (§§ 960.253, 982.514)

As required by § 5.632 of the current regulations, where tenants pay for their utility usage, PHAs must reimburse tenants if the utility allowance exceeds the total tenant payment. HUD's public housing regulations at § 960.253 specify the conditions under which a utility reimbursement must be paid but do not specify how frequently such reimbursement must be made. HUD's HCV regulations at § 982.514, however, require voucher agencies to pay any utility reimbursement on a monthly basis. As a result, voucher agencies may have to process small monthly checks and expend postage to mail them to voucher holders, which may constitute an administrative and financial burden.

For both the public housing and HCV programs, this rule proposes to permit PHAs to make reimbursements of $20 or less (per quarter) on a quarterly basis, in order to eliminate the burdensome process of processing and mailing monthly reimbursement checks. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement.

Earned Income Disregard (§§ 5.617, 574.305, 960.255)

HUD's regulations at § 5.617 and § 960.255 establish the earned income disregard (EID), which permits certain tenants of public housing and persons with disabilities participating in the HCV and certain CPD programs [7] to accept a job without having their rent increase right away due to the increase in earned income. The EID is available for a total of 24 months, but those months can be spread across 48 months to account for intermittent job losses. In addition, PHAs are required to fully exclude income for the first 12 months of EID, and to exclude only 50 percent for the last 12 months. Tracking employment for a 48-month period and determining how much to exclude depending on the month can be burdensome to PHAs.

HUD proposes to retain the current framework for the earned income disregard in § 5.617 as applied to the HOPWA program and to relocate these

[7] The CPD programs are: HOME Investment Partnerships Program (24 CFR part 92), Housing Opportunities for Persons with AIDS (24 CFR part 574, and Continuum of Care program (24 CFR part 578). Current regulations refer to the Supportive Housing program, and HUD is proposing to update that reference to the Continuum of Care program.

requirements to a new § 574.305 in the HOPWA regulations in 24 CFR part 574. These requirements will continue to apply to qualified families, defined as those families that reside in HOPWA-assisted housing (including tenant-based rental assistance funded under HOPWA). HUD is retaining the current framework for HOPWA, while changing it for other programs, because under the HOPWA program every assisted household will have at least one family member that is a person with a disability (defined at § 5.403) and, therefore, will be affected by this rulemaking. If the new EID requirements were applied to the HOPWA program, it would disproportionately affect the HOPWA program portfolio and adversely affect HOPWA program participants. At the same time, however, HUD supports retaining the existing EID rules for the HOPWA program. For these reasons, § 574.305 is proposed to be created to retain the existing EID rules for the HOPWA program.

For programs other than HOPWA, HUD proposes to limit the EID to 24 consecutive months from the date that a participant qualifies for the EID. The rule would maintain the full exclusion for the first 12-month period, provided the eligible family member remains continually employed for such period. For the second 12-month period, the rule would provide PHAs with the discretion to phase in a rent increase, disregarding not less than 50 percent of the excluded amount in determining a family's rent, but again only if the eligible family member remains continually employed. After the expiration of the consecutive 24-month period during which a family has remained continually employed, the EID would terminate. These changes would eliminate the burden on PHAs of having to track employment starts and stops over a 48-month period.

HUD notes that, pursuant to section 3(b)(5)(B)(ii) of the 1937 Act (42 U.S.C. 1437a(b)(5)(B)(ii)), PHAs have wide discretion to exclude earned income in determining adjusted income for families residing in public housing. At their discretion, PHAs could therefore adopt policies that continue an earned income exclusion for such families beyond the point at which the EID terminates.

Family Declaration of Assets Under $5,000 (§§ 960.259, 982.516)

Families are required to report all assets annually. The amount of interest earned on those assets is included as income used to calculate the tenant's rent obligation. Tenants with assets below $5,000 typically generate minimal income from these assets, which results in small changes, if any, to tenant rental payments. PHAs spend significant time verifying such assets.

HUD proposes that, for a family that has net assets equal to or less than $5,000, a PHA, at both admission and recertification, may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount will be included in the family's income.

C. PH Program Regulations

Public Housing Rents for Mixed Families (§ 5.520(d))

a. When calculating prorated rents for families that include members both with and without citizenship or eligible immigration status, § 5.520(d) requires PHAs to determine the maximum rent by establishing the 95th percentile of all total tenant payments (TTPs) for each bedroom size. To do this, PHAs have to take the full set of TTPs, order them from highest to lowest, and identify the numeral below which 95 percent of TTPs fall.

This rule would require PHAs to use instead the established flat rent applicable to the unit, significantly reducing the administrative burden for PHAs.

b. Under the current method of calculating prorated rents for mixed families, when a mixed family's TTP is greater than the maximum rent, the mixed family ends up paying less under proration than would a family where all members are eligible for assistance.

This rule proposes to amend the regulation to use the mixed family's TTP when TTP exceeds the flat rent, eliminating this discrepancy.

Note: Several of the proposed changes to this provision simply eliminate references to the legacy Section 8 Rental Certificate program. The only substantive changes pertain to the method of prorating assistance for the public housing program.

Flat Rents (§ 960.253)

The 2014 Appropriations Act requires PHAs to establish flat rents equal to no less than 80 percent of the applicable Fair Market Rent. In the event that implementation of this requirement would increase a family's rent by more than 35 percent, the PHA must phase in the flat rent as necessary to ensure that a family's rental payment does not increase by more than 35 percent in any one year. This proposed rule would update the current regulations to reflect the new statutory requirements and provide additional information to PHAs on how to implement the new requirements, including details on how tenant-paid utilities affect flat rents and the information about rent options a PHA must provide to a family paying a flat-rent.

In addition, HUD's current regulation at § 960.253(d) permits PHAs to set a ceiling limit on rents for a period of three years from October 1, 1999, if the PHA had previously established ceiling rents. After that time, PHAs were required to adjust the ceiling rent to be equal to the flat rent for a unit. Given that the 3-year time period has expired and the flat rent provisions now determine a maximum rent, all ceiling rents must be set equal to flat rents. To further clarify, this proposed rule would apply the requirements for establishing and updating flat rents to the requirements for ceiling rents.[8]

Tenant Self-Certification for Community Service Requirements (§§ 960.605, 960.607)

Under HUD's current public housing regulations, PHAs are required annually to review and determine family member compliance with the community service requirement. For any qualifying activity administered by a third party that a family states it has completed, the PHA is required to obtain third-party verification. Although HUD's regulations at § 960.607(a) require family members who complete qualifying activities administered by a third party to obtain a certification signed by the third party, in many cases this requirement is not met, resulting in PHAs having to request third-party verification from organizations that either fail to maintain adequate records or are simply unresponsive. The effort to obtain third-party verification of compliance consumes considerable time and resources that could be directed to other PHA activities, and, in some cases, delays the recertification process.

HUD proposes to allow PHAs to accept a tenant's signed self-certification of compliance with the community service requirement. Any self-certification must include details (including contact information) on what the activity was and where it was completed and a certification that the

[8] HUD notes that section 238 of the Department of Housing and Urban Development Act, 2015, as part of the Fiscal Year (FY) 2015 Omnibus Consolidated and Further Continuing Appropriations Act (Public Law 113–235 (further revises section 3(a)(2)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(2)(B)(i)), pertaining to flat rents. As to not delay issuance of this proposed rule, HUD will address the further revision in a separate proposed rule.

statement is true. Further, PHAs are encouraged to undertake periodic quality assurance reviews of self-certifications to test for fraudulent certifications.

Public Housing Grievance Procedures (§§ 966.52 Through 966.57)

Under HUD's current regulations, many portions of the grievance process are repetitive or overly prescriptive for PHAs. Through this rule, HUD proposes to eliminate the repetitive and overly prescriptive requirements in the regulations, and instead provide PHAs with additional flexibility to include procedures in the mandatory Admissions and Continued Occupancy Policies developed by each PHA. Procedures proposed to be streamlined are informal settlements (§ 966.54), grievance procedures for failure to request a hearing and requiring escrow deposits (§ 966.55), and matters relating to transcripts, copies, and the conduct of the hearing (§§ 966.56 and 966.57). Requirements relating to scheduling and location formerly contained in § 966.55 are proposed to be merged into § 966.56.

HUD also proposes to permit PHAs to establish expedited grievance procedures and eliminates a separate category of hearing panel by redefining "hearing officer" to include the possibility of more than one person hearing a complaint.

Limited Vacancies (§ 990.150)

Under current regulations, HUD is required to provide operating subsidy for a limited number of vacant units under an Annual Contributions Contract. The proposed rule would clarify that the number of vacant units eligible for operating subsidy shall be not more than 3 percent of the total units, on a project-by-project basis.

Section D: HCV Program Regulations

Start of Assisted Tenancy (§ 982.309)

Under current regulations, there is no option for PHAs to adopt policies regarding the date when a tenant may move into an assisted unit once the unit is ready for move-in.

HUD proposes to allow PHAs to limit move-ins to certain days of the month, such as the first day of the month. This would streamline administration of move-ins for some PHAs, reduce the need for pro-rated checks and possibly the number of checks issued, and provide Housing Assistance Payment (HAP) savings by eliminating overlapping HAP payments.

Biennial Inspections and the Use of Alternate Inspection Methods (§§ 982.405, 983.103)

The 2014 Appropriations Act authorizes PHAs to comply with the requirement to inspect HCV units during the term of a HAP contract by inspecting such units not less than biennially rather than annually to assure compliance with HUD's housing quality standards. To avoid duplication of effort, for example where an HCV-assisted tenant resides in a property inspected under another program (for example, the Low Income Housing Tax Credit program), the law authorizes a PHA to comply with the biennial inspection requirement by relying upon an inspection performed pursuant to such other program. Finally, the law authorizes the Secretary to adjust the frequency of inspections for mixed-finance properties assisted with project-based vouchers where inspections performed under such other program take place more or less frequently than biennially.

This rule proposes to update HUD's regulations to reflect the statutory changes and to provide details on how PHAs may use the new flexibilities. PHAs will be required to obtain copies of reports of these inspections and will be prohibited from relying upon such inspections if such copies may not be obtained. In addition, because section 8(o)(13)(F) of the 1937 Act states that the inspection requirements of section 8(o)(8) apply to the PBV program, this rule proposes to update the PBV inspection regulations (§ 983.103) to reflect the new statutory authority in section 8(o)(8).

Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

HUD proposes to allow PHAs the option of charging a reasonable fee to an owner if the owner indicates that an HQS violation is fixed, but a reinspection proves that the violation has not yet been fixed. This fee would not be permitted if the reinspection confirms that previous violations have been fixed but also reveals new HQS violations. The fee would pertain solely to owner obligations under § 982.404(a) and not to family obligations under § 982.404(b).

Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

Current regulations require a PHA to request a waiver from a HUD Field Office for an exception payment standard above 110 percent of the fair market rent (FMR) to provide a reasonable accommodation for a family that includes a person with a disability. This process takes considerable administrative time for the PHA and, in some cases, the processing time for the waiver prevents the family from leasing the unit.

HUD proposes to allow PHAs to approve, if they so choose, a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with a disability. This proposed streamlining provision would allow a PHA to establish a payment standard within limits currently permitted but designated for approval only by a HUD Field Office. For any voucher unit assisted under the program, PHAs would still be required to perform a rent reasonableness determination in accordance with section 8(o)(10) of the 1937 Act and HCV program regulations. Therefore, PHAs that utilize this provision must maintain documentation that the PHA performed the required rent reasonableness analysis.

Family Income and Composition: Regular and Interim Examinations (§ 982.516)

With respect to interim examinations, current regulations require PHAs to conduct a reexamination of income whenever a family member with income is added to a family participating in the voucher program. Regulations for the public housing program (at § 960.257) are less prescriptive.

In the interest of streamlining requirements across programs, HUD proposes to revise § 982.516 to align the regulatory language more closely with § 960.257, which will facilitate HUD's ability to issue guidance on interims that applies uniformly to the public housing and voucher programs.

Utility Payment Schedules (§ 982.517)

a. *Size and type of units.* HUD's current regulations require PHAs to establish a utility allowance based on size and type of units in a given locality. Requiring PHAs to establish a utility allowance based on both of these factors increases the complexity involved in developing a utility allowance schedule.

HUD proposes to require that the allowance be based on the size of the unit and either the type of the unit, as is currently required, or a streamlined version of "unit type," limited to "attached" or "detached." In other words, PHAs would have the option to define unit type as either "attached" or "detached." For any family that would face a lower utility allowance because of this change to the schedule, the PHA

must provide at least 60 days' notice before the revised utility allowance schedule may go into effect.

b. *Size of dwelling units.* HUD's current regulations require PHAs to use utility allowances for the size of the dwelling unit actually leased by the family. The 2014 Appropriations Act requires that the amount allowed for tenant-paid utilities not exceed the utility allowance for the family unit size as determined by the PHA. Therefore, HUD proposes to revise the regulations to conform to the statutory change.

The proposed rule would require PHAs to use the lesser of the two standards, unless the family is living in a larger unit as a result of a reasonable accommodation, in which case the PHA would be required to use the utility allowance for the size unit the family is actually leasing. Section 982.517(e) already requires a PHA to approve a higher amount than shown on the utility allowance schedule as a reasonable accommodation, so HUD is proposing no revision to that provision. The proposed rule also includes a clarifying change to § 982.402, cross-referencing § 982.517.

III. Specific Issues for Comment

While HUD solicits and welcomes comments on all aspects of this rule, HUD specifically seeks comment on the following:

1. *Use of Actual Past Income (§ 5.609).* Does this provision provide a clear streamlining benefit to PHAs? If not, what additional specific changes should HUD consider?

a. For PHAs that choose to use past income to determine annual income, does requiring the same time frame for all sources of income and expenses still provide for streamlining, or does this make the information collection and verification process too complex? If it does make the process too complex, what alternatives should be available?

b. Should PHAs be permitted to use past income for only some income sources, rather than for the entire program? For example, does past income only work for families with consistent income amounts? Or, does past income also work for families that have sporadic income?

c. What other types of income documentation should HUD permit PHAs to use to verify past income?

2. *Earned Income Disregard (§§ 5.617, 960.255).* Will the proposed changes to the earned income disregard reduce the administrative burden associated with implementing the EID? If not, what other or additional specific changes would facilitate administration of the EID?

3. *Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516).* In order to utilize these provisions, PHAs and MFH owners will be required to determine annually that family incomes consist solely of fixed-income sources. Consistent with the goal of streamlining, by what means could PHAs and MFH owners assure that such families do not have other sources of income?

4. *Utility Reimbursements (§§ 960.253, 982.514).* Will the proposed changes to the required frequency of utility reimbursement provide regulatory relief to PHAs? If not, then what changes would provide such relief?

5. *Start of Assisted Tenancy (§ 982.309).* HUD is concerned that this proposed change may have the unintended consequence of limiting tenant choice. Does the provision provide enough of a benefit to PHAs to merit inclusion in this streamlining regulation?

6. *Biennial Inspections and the Use of Alternate Inspection Method (§ 982.405).* Where an inspection conducted under an alternative method results in a finding that a property is out of compliance with the standard particular to that method, should HUD still require PHAs to inspect units using HQS, or should HUD allow PHAs to rely upon remedial actions taken to bring the property into compliance with the standards under the alternative inspection protocol? In the latter instance, if HUD were to adopt such a policy, what should HUD require of PHAs to demonstrate that an initially noncompliant property was subsequently brought into compliance with the standards under an alternative inspection method?

7. *Inspection of Mixed-Finance Properties (§ 982.405).* Should HUD broaden the applicability of this provision beyond PBV-assisted properties with LIHTC or HOME financing or an FHA-insured mortgage? If so, to what specific type(s) of mixed-finance properties should it apply, and why?

8. *General.* Are there other opportunities to align requirements across programs? Please be specific.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0220 and 0169. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule reduces administrative burdens on PHAs and MFH owners in many aspects of administering assisted housing. All PHAs and MFH owners, regardless of size, will benefit from the burden reduction proposed by this rule. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's belief that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.123, 14.135, 14.149, 14.157, 14.181, 14.195, 14.23514.241, 14.326, 14.850, 14.871, and 14.872.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

24 CFR Part 574

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements

24 CFR Part 960

Aged, Grant programs-housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 966

Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements

24 CFR Part 990

Accounting, Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5, 574, 960, 966, 982, 983, and 990 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

■ 2. Amend § 5.216 as follows:

■ a. Designate the second paragraph (g)(1)(ii) as paragraph (g)(1)(iii);

■ b. Revise paragraph (h)(1);

■ c. In paragraph (h)(2), remove the phrase "paragraph (h)(1)" and add in its place "paragraph (g)(1)"; and

■ d. Add paragraph (h)(3).

The revision and addition read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

* * * * *

(h) * * *

(1) Except as provided in paragraphs (h)(2) and (3) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.

* * * * *

(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission, the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in paragraph (g)(1) of this section within the required time period, the processing entity shall follow the provisions of § 5.218.

* * * * *

■ 3. Amend § 5.520 as follows:

■ a. Revise paragraph (c)(1) introductory text;

■ b. Revise paragraph (c)(2) introductory text;

■ c. Revise paragraph (d); and

■ d. Add paragraph (e).

The revisions and addition read as follows:

§ 5.520 Proration of assistance.

* * * * *

(c) * * *

(1) *Section 8 assistance other than assistance provided for a tenancy under the Section 8 Housing Choice Voucher Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

* * * * *

(2) *Assistance for a Section 8 voucher tenancy.* For a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

* * * * *

(d) *Method of prorating assistance for Public Housing covered programs.* (1) The PHA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the total tenant payment in accordance with § 5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Subtract the total tenant payment from the PHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Divide the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(iv) *Step 4.* Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(2) The product of steps 1 through 4 of paragraphs (d)(1)(i) through (iv) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the PHA-established flat rent minus the amount of the eligible subsidy.

(e) *Method of prorating assistance when the mixed family's TTP is greater than the Public Housing flat rent.* When the mixed family's TTP is greater than the flat rent, the PHA must use the TTP as the mixed family TTP. The PHA subtracts from the mixed family TTP any established utility allowance, and the sum becomes the mixed family rent.

§ 5.601 [Amended]

■ 4. In § 5.601 in paragraph (e),, remove the phrase "Housing Opportunities for Persons with AIDS (24 CFR part 574);".

■ 5. In § 5.603, revise the definitions of "Extremely low income family" and "Total tenant payment" in paragraph (b) to read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Extremely low-income family. A family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

(2) 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Total tenant payment. See § 5.628.

* * * * *

■ 6. Amend § 5.609 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b)(9), add the phrase "and any other required fees and charges" after "tuition" in the first sentence; and

■ c. Add paragraphs (e) and (f).

The revision and additions read as follows:

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member, either:

(i) Prior to admission or the annual reexamination effective date (*i.e.,* "actual past income"); or

(ii) During the 12-month period following admission or the annual reexamination effective date (*i.e.,* "projected income"); and

(2) Are not specifically excluded in paragraph (c) of this section.

* * * * *

(e) At the family's request, the PHA or owner must use projected income to calculate annual income.

(f) Absent a family's request to use projected income to calculate annual income:

(1) A PHA may choose to determine annual income by using actual past income in lieu of projected income for its public housing or Housing Choice Voucher program (or both), but it must apply the same definition of annual income for all families in the selected program.

(2) An owner may choose to determine annual income by using actual past income in lieu of projected income, but it must apply the same definition of annual income for all families in a single property.

■ 7. In § 5.617, revise paragraphs (a) and (c) to read as follows:

§ 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicable programs.* The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Continuum of Care Program (24 CFR part 578); and the Housing Choice Voucher Program (24 CFR part 982). For the Housing Opportunities for Persons With AIDS (HOPWA) program, refer to 24 CFR 574.305. For public housing program self-sufficiency incentives, refer to 24 CFR 960.255.

* * * * *

(c) *Disallowance of increase in annual income*—(1) *Initial 12-month exclusion.* During the consecutive 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family 100 percent of any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second 12-month exclusion.* During the second consecutive 12-month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family not less than 50 percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Duration of exclusions.* Any income exclusions under this paragraph (c) shall continue only as long as the family member who is a person with disabilities of a qualified family is continually employed, during the 24-month exclusionary period. If the family member becomes unemployed, the income exclusion shall stop and the family must re-qualify under the terms of paragraphs (a) and (b) of this section for the benefits under this section.

(4) *Conflicting exclusions.* If grant funds affected by this paragraph (c) are combined with grant funds that have conflicting earned income exclusions, the regulations pertaining to the program that provides the rental assistance shall govern.

* * * * *

■ 8. In § 5.657, add paragraph (d) to read as follows:

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

* * * * *

(d) *Reexaminations for families with fixed incomes.* For families with fixed incomes, an owner may elect to determine the family's annual income at reexamination by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(1) "Families with fixed income" is defined as families whose income consists solely of the following:

(i) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(ii) Federal, State, local and private pension plans.

(2) To verify a cost of living adjustment, an owner may use adjustments published publicly or that are made available to the owner by tenant-provided, third party-generated documents. If no verification is available, the owner must follow the

standard income verification process to calculate the change in income.

(3) An owner that adopts the streamlined reexamination procedures in this paragraph must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (§ 5.609(a)(1)(i)).

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

■ 9. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

■ 10. Add § 574.305 to read as follows:

§ 574.305 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) *Applicability.* The disallowance of increase in annual income provided by this section is applicable only to the HOPWA program.

(b) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Person with disabilities. See 24 CFR 5.403.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in HOPWA-assisted housing:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the grantee or project sponsor in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(c) *Disallowance of increase in annual income.* (1) Initial twelve-month exclusion. During the cumulative twelve-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the grantee or project sponsor must exclude from annual income (as defined at 24 CFR 5.609) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second twelve-month exclusion and phase-in.* During the second cumulative twelve-month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the grantee or project sponsor must exclude from annual income of a qualified family fifty percent of any increase in income of a family member who is a person with disabilities as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (2) of this section is limited to a lifetime 48-month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) of this section and a maximum of twelve months for disallowance under paragraph (c)(2) of this section, during the 48-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

§ 574.310 [Amended]

■ 11. In § 574.310, remove the citation "24 CFR 5.617" and add in its place "§ 574.305" in paragraph (d)(1).

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 12. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 13. In § 960.102, revise paragraph (a) to read as follows:

§ 960.102 Definitions.

(a) Definitions found elsewhere:

(1) *General definitions.* The following terms are defined in 24 CFR part 5, subpart A: 1937 Act, drug, drug-related criminal activity, elderly person, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.

(2) *Definitions under the 1937 Act.* The following terms are defined in 24 CFR part 5, subpart D: annual contributions contract (ACC), applicant, elderly family, family, person with disabilities.

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in 24 CFR part 5, subpart F: Annual income (see 24 CFR 5.609); economic self-sufficiency program, extremely low income family, low income family, tenant rent, total tenant payment (see 24 CFR 5.613), utility allowance.

* * * * *

■ 14. Amend § 960.253 as follows:

■ a. Revise paragraph (b);

■ b. In paragraph (c)(1), remove the phrase "PHA's rent policies" and add in its place "PHA's policies";

■ c. Remove the last sentence of paragraph (c)(3) and add paragraph (c)(4);

■ d. Revise paragraphs (d) and (e);

■ e. Redesignate paragraph (f) as paragraph (g); and

■ f. Add a new paragraph (f).

The revisions and addition read as follows:

§ 960.253 Choice of rent.

* * * * *

(b) *Flat rent.* (1) The flat rent is based on the rental value of the unit, and is subject to the following requirements:

(i) Not less than once every five PHA fiscal years, the PHA must use a reasonable method to determine the rental value for a unit.

(ii) The PHA must establish a flat rent that is based upon the requirements of paragraph (b)(1)(i), but the flat rent may not be less than 80 percent of the applicable Fair Market Rent (FMR) as determined under 24 CFR part 888, subpart A.

(iii) For units where utilities are tenant-paid, the PHA must adjust the flat rent amount downward by the amount of a utility allowance for which the family might otherwise be eligible under 24 CFR part 965, subpart E.

(iv) The PHA must revise, if necessary the flat rent amount for a unit no later than 90 days after HUD issues new FMRs.

(2) If a new flat rent, adjusted to meet the 80 percent of FMR threshold, would cause a family's rent to increase by more than 35 percent, the family's rent increase must be phased in at 35 percent annually until such time that the family chooses to pay the income-based rent or the family is paying the flat rent established pursuant to this paragraph.

(3) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) * * *

(4) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments quarterly, for reimbursements totaling $20 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA must reimburse the family for a prorated share of the applicable reimbursement.

(ii) If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* A PHA using ceiling rents authorized and established before October 1, 1999, may continue to use ceiling rents, provided such ceiling rents are set at the level required for flat rents under this section. PHAs must follow the requirements for calculating and adjusting flat rents in paragraph (b) of this section when calculating and adjusting ceiling rents.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship; and

(2) The dollar amounts of tenant rent for the family under each option, following the procedures in paragraph (f) of this section.

(f) *Reexamination of family income and revisions of flat rental amounts.* The PHA must revise the flat rental amount, as necessary, based on the findings of the PHA's rental value analysis and changes to the FMR. Families must be offered the choice between a flat rental amount and a previously calculated income-based rent according to the following:

(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years.

(2) At initial occupancy, or in any year in which a participating family is paying the income-based rent, the PHA must:

(i) Conduct a full examination of family income and composition, following the provisions in § 960.257;

(ii) Inform the family of the flat rental amount and the income-based rental amount determined by the examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

(3) In any year in which a family chooses the flat rent option but the PHA chooses not to conduct a full examination of family income and composition for the annual rent option under the authority of paragraph (f)(1) of this section, the PHA must:

(i) Use income information from the examination of family income and composition from the first annual rent option;

(ii) Inform the family of the updated flat rental amount and the rental amount determined by the most recent examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

* * * * *

■ 15. In § 960.255, revise paragraph (c) to read as follows:

§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.

* * * * *

(c) *Disallowance of increase in annual income*—(1) *Initial 12-month exclusion.* During the consecutive 12-month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 24 CFR 5.609) of a qualified family 100 percent of any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second 12-month exclusion.* During the second consecutive 12-month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family not less than 50 percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Duration of exclusions.* Any income exclusions under this paragraph (c) shall continue only as long as a member of a qualified family is continually employed. If the family member becomes unemployed, the income exclusion shall stop and the family must re-qualify for the benefits under this section, at which point such family shall be eligible for all benefits under this paragraph (c).

* * * * *

■ 16. In § 960.257 revise the section heading and paragraphs (a) and (b) to read as follows:

§ 960.257 Family income and composition: Annual and interim reexaminations.

(a) *When PHA is required to conduct reexamination.* (1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments to the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family income and composition at least once every three years, in accordance with the procedures in § 960.253(f).

(3) For all families who include nonexempt individuals, as defined in § 960.601, the PHA must determine compliance once each 12 months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) *Interim reexaminations.* (1) A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination

within a reasonable time after the family request.

(2) The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition. The PHA must make the interim reexamination of family income or composition within a reasonable time after the family request.

(3) For families with fixed incomes, a PHA may elect to recalculate a family's annual income at an interim reexamination by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(i) "Families with fixed income" is defined as families whose income consists solely of the following:

(A) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(B) Federal, State, local and private pension plans.

(ii) To verify a cost of living adjustment, a PHA may use adjustments published publicly or that are made available to the PHA by tenant-provided, third party-generated documents. If no verification is available, the PHA must follow the standard income verification process to calculate the change in income.

(iii) A PHA that adopts the streamlined reexamination procedures in this paragraph (b)(3) of this section must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (24 CFR 5.609(a)(1)(i)).

* * * * *

■ 17. In § 960.259, revise paragraph (c)(1) introductory text, and add paragraph (c)(2) to read as follows:

§ 960.259 Family information and verification.

* * * * *

(c) * * *

(1) The PHA must obtain and document in the family file third-party verification of the following factors, or must document in the file why third-party verification was not available:

* * * * *

(2) For a family with net assets equal to or less than $5,000, a PHA may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

■ 18. In § 960.605, revise paragraphs (c)(3) through (5) to read as follows:

§ 960.605 How PHA administers service requirements.

* * * * *

(c) * * *

(3) The PHA must review family compliance with service requirements and must verify such compliance annually at least 30 days before the end of the 12-month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA may obtain verification of family compliance from such third parties or may accept a signed certification from the family member that he or she has performed such qualifying activities.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in a participant family's files.

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at 24 CFR 5.105(a) and affirmatively further fair housing in all their activities in accordance with the AFFH Certification as described in 24 CFR 91.225(a)(1).

■ 19. In § 960.607, revise paragraph (a) to read as follows:

§ 960.607 Assuring resident compliance.

(a) *Acceptable documentation demonstrating compliance.* (1) If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide one of the following:

(i) A signed certification to the PHA by such other organization that the family member has performed such qualifying activities; or

(ii) A signed self-certification to the PHA by the family member that he or she has performed such qualifying activities.

(2) The signed self-certification must include the following:

(i) A statement that the tenant contributed at least 8 hours per month of community service not including political activities within the community in which the adult resides; or participated in an economic self-sufficiency program (as that term is defined in paragraph (g) of this section) for at least 8 hours per month;

(ii) The name, address, and a contact person at the community service provider; or the name, address and contact person for the economic self-sufficiency program;

(iii) The date(s) during which the tenant completed the community service activity, or participated in the economic self-sufficiency program;

(iv) A description of the activity completed; and

(v) A certification that the tenant's statement is true.

* * * * *

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 20. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

■ 21. Amend § 966.52 by adding a second sentence at the end of paragraph (a); and adding paragraph (e), to read as follows:

§ 966.52 Requirements.

(a) * * * A PHA may establish an expedited grievance procedure as defined in § 966.53.

* * * * *

(e) The PHA must not only meet the minimal procedural due process requirements contained in this subpart but also satisfy any additional requirements required by local, state, or federal law.

■ 22. In § 966.53, revise paragraphs (b), (d), and (e) to read as follows:

§ 966.53 Definitions.

* * * * *

(b) *Complainant* means any tenant whose grievance is presented to the PHA or at the project management office.

* * * * *

(d) *Expedited grievance* means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves: (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) *Hearing officer* means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training.

* * * * *

§ 966.54 [Amended]

■ 23. Amend § 966.54 by removing the second and third sentences.

§ 966.55 [Removed]

■ 24. Remove § 966.55.

■ 25. Amend § 966.56 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b)(2), remove the comma;

■ c. Remove paragraphs (c), (f), and (g);
■ d. Redesignate paragraphs (d), (e), and (h) as paragraphs (c), (d), and (e), respectively;
■ e. Revise redesignated paragraph (c); and
■ f. In redesignated paragraph (e), add paragraph (e)(3).

The revisions and addition read as follows:

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate official.

* * * * *

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer A determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

* * * * *

(e) * * *

(3) Materials must be provided in other languages prevalent in the Community in accordance with HUD' Final Guidance on LEP published in the **Federal Register** on January 22, 2007.

■ 26. Revise § 966.57 to read as follows:

§ 966.57 Decision of the hearing officer.

(a) The hearing officer shall prepare a written decision, including the reasons for the PHA's decision within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder.

(b) The decision of the hearing officer shall be binding on the PHA unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affects the complainant's rights, duties, welfare or status;

(2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 27. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 28. In § 982.309 add paragraph (a)(5) to read as follows:

§ 982.309 Term of assisted tenancy.

(a) * * *

(5) The PHA may adopt policies limiting the effective date of the lease to a certain day or days of the month, such as the first day of the month. Assistance paid upon family move-out must be in accordance with § 982.311(d).

* * * * *

■ 29. In § 982.402 add a sentence at the end of (d)(2) to read as follows:

§ 982.402 Subsidy Standards.

* * * * *

(d) * * *

(2) * * * However, utility allowances must follow § 982.517(d).

■ 30. Amend § 982.405 as follows:
■ a. In paragraph (a), remove the word "annually" and add in its place "biennially";
■ b. Revise paragraph (e); and
■ c. Add paragraph (f).

The revision and addition read as follows:

§ 982.405 PHA initial and periodic unit inspection.

* * * * *

(e) The PHA may not charge the family for inspection or reinspection of the unit. The PHA may not charge the owner for the initial inspection of the unit or a regularly scheduled inspection of the unit. The PHA may establish a reasonable fee to owners for reinspections if the reinspection reveals that deficiencies cited in the previous inspection that the owner is responsible for repairing pursuant to § 982.404(a) were not corrected. The owner may not pass this fee along to the family.

(f) If a participant family or government official reports a condition that is life-threatening (*i.e.*, the PHA would require the owner to make the repair within no more than 24 hours in accordance with § 982.404(a)(3)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (*i.e.*, the PHA would require the owner to make the repair within no more than 30 calendar days), then the PHA must inspect the unit within 15 days of when the PHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

§ 982.406 [Redesignated as § 982.407]

■ 31. Redesignate § 982.406 as § 982.407.

■ 32. Add a new § 982.406 to read as follows:

§ 982.406 Use of Alternative Inspections.

(a) *In general.* (1) A PHA may comply with the biennial inspection requirement in § 982.405(a) by relying on an inspection conducted for another housing assistance program.

(2) Units in properties that are mixed-finance properties assisted with project-based vouchers may be inspected at least triennially pursuant to 24 CFR 983.103(g).

(b) *Administrative plans.* A PHA relying on an alternative inspection to fulfill the biennial inspection requirement for a particular unit must identify the alternative inspection method being used in the PHA's administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its plan amendment and public notice requirements before using the alternative inspection method.

(c) *Eligible inspection methods.* (1) PHAs may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed under the Department of the Treasury's Low-Income Housing Tax Credit (LIHTC) program, or inspections performed by HUD with no action other than amending their administrative plans.

(2) If a PHA wishes to rely on an inspection method other than a method listed in paragraph (c)(1) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a certification affirming, under penalty of perjury, that the

method "provides the same or greater protection to occupants of dwelling units" as would HQS. A PHA must also assure that it will be able to obtain the results of such alternative inspection; a PHA that is unable to obtain the results of an alternative inspection may not rely upon the inspection method to comply with the biennial inspection requirement in § 982.405(a).

(3) A PHA that submits a certification under paragraph (c)(2) of this section must monitor changes to the standards and requirements applicable to such method so that it is made aware of any weakening of the method that would cause the alternative inspection to no longer meet or exceed HQS, in which case the PHA may no longer rely upon the alternative inspection method to comply with the biennial inspection requirement.

(d) *Rules for passing alternative methods.* (1) In order to utilize an alternative inspection method, a property must meet the standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a "pass" score, then the PHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.

(ii) If a property is inspected under an alternative inspection method, and the property receives a "fail" score, then the PHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of a program where deficiencies are simply noted—then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a "fail" score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

(2) Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection method, the PHA must, in a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies.

(f) *Records retention.* As with all other inspection reports, and as required by § 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

■ 33. Amend § 982.503 as follows:

■ a. Add paragraph (b)(1)(iii);

■ b. Remove the first word in paragraph (b)(2) and in its place add "Except as described in § 982.503(b)(1)(iii), the";

■ c. In paragraph (c)(2), remove the paragraph heading, remove paragraph (c)(2)(ii), and redesignate paragraphs (c)(2)(i)(A) and (B) as paragraphs (c)(2)(i) and (ii), respectively.

The addition reads as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(1) * * *

(iii) The PHA may establish an exception payment standard up to 120 percent if required as a reasonable accommodation for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at § 982.507.

* * * * *

§ 982.505 [Amended]

■ 34. In § 982.505:

■ a. In the section heading, remove "Voucher tenancy:"; and

■ b. In paragraph (d), remove the phrase "within the basic range" and add in its place "between 90 and 120 percent of the FMR".

■ 35. In § 982.514, add paragraph (c) to read as follows:

§ 982.514 Distribution of housing assistance payment.

* * * * *

(c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments quarterly, for reimbursements totaling $20 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement.

(ii) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

■ 36. Amend § 982.516 as follows:

■ a. Add a hyphen between "third" and "party" in paragraph (a)(2) introductory text and add paragraph (a)(3);

■ b. Remove paragraph (e);

■ c. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively;

■ d. Add a new paragraph (b);

■ e. In redesignated paragraph (c), revise the paragraph heading; and

■ f. Revise redesignated paragraph (e)(2).

The revisions and addition read as follows:

§ 982.516 Family income and composition: Annual and interim examinations.

(a) * * *

(3) For a family with net assets equal to or less than $5,000, a PHA may accept a family's declaration that it has net assets equal to or less than $5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income

(b) *Families with fixed income.* For families with fixed incomes, a PHA may elect to recalculate a family's annual income by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(1) "Families with fixed income" is defined as families whose income consists solely of the following:

(i) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(ii) Federal, State, local and private pension plans.

(2) To verify a cost of living adjustment, a PHA may use adjustments published publicly or that are made available to the PHA by tenant-provided, third party-generated documents. If no verification is available, the PHA must follow the standard income verification process to calculate the change in income.

(3) A PHA that adopts the streamlined reexamination procedures in this paragraph (b) of this section must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (24 CFR 5.609(a)(1)(i)).

(c) *Interim reexaminations.* * * *

* * * * *

(e) * * *

(2) At the effective date of a regular or interim reexamination, the PHA must

make appropriate adjustments in the housing assistance payment in accordance with § 982.505.

* * * * *

■ 37. Amend § 982.517 as follows:

■ a. Capitalize the first word in paragraph (b)(2)(i);

■ b. Revise paragraph (b)(3);

■ c. In paragraph (c)(1), capitalize the first word and remove the word "PHAs" and add in its place the word "has";

■ d. Redesignate paragraph (c)(2) as paragraph (c)(3) and add a new paragraph (c)(2); and

■ e. Revise paragraph (d).

The revisions read as follows:

§ 982.517 Utility allowance schedule.

* * * * *

(b) * * *

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms) and unit type (*e.g.*, apartment, row-house, town house, single-family detached, and manufactured housing). At the PHA's discretion, "unit type" may consider solely whether the unit is "attached" or "detached."

* * * * *

(c) * * *

(2) In the event that the utility allowance to be used in calculating the housing assistance payment provided on behalf of a participant decreases based solely on a PHA opting to determine unit type based solely on whether a unit is "attached" or "detached," the PHA must provide at least 60 days notice to the participant prior to the revised utility allowance taking effect.

* * * * *

(d) *Use of utility allowance schedule.* (1) The PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

(2) At reexamination, the PHA must use the PHA current utility allowance schedule, provided the PHA is able to provide a family with at least 60 days' notice prior to such reexamination. A PHA may comply with this 60-day notice requirement by means of an interim reexamination.

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 38. The Authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.2 [Amended]

■ 39. In § 983.2 amend paragraph (c)(4) by removing the citation "§ 982.406" and adding in its place "§ 982.407".

■ 40. In § 983.103, revise paragraph (d) and add paragraph (g) to read as follows:

§ 983.103 Inspecting Units.

* * * * *

(d) *Biennial inspections.* (1) At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted toward meeting this inspection requirement.

(2) If more than 20 percent of the biennial sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

(3) A PHA may also use the procedures applicable to HCV units in 24 CFR 982.406.

* * * * *

(g) *Mixed-Finance Properties.* In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to inspection under the LIHTC or HOME program or as a result of an FHA-insured mortgage, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

■ 41. The Authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

■ 42. In § 990.150 revise paragraph (a) to read as follows:

§ 990.150 Limited vacancies.

(a) *Operating subsidy for a limited number of vacancies.* HUD shall pay operating subsidy for a limited number of vacant units under an ACC. The limited number of vacant units shall be equal to or less than 3 percent of the unit months on a project-by-project basis based on the definition of a project under subpart H of this part (provided that the number of eligible unit months shall not exceed 100 percent of the unit months for a project), beginning July 1, 2014.

* * * * *

Dated: December 22, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

Biniam T. Gebre,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2014–30504 Filed 1–5–15; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 81

[EPA–R09–OAR–2014–0869; FRL–9921–35–Region–9]

Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the boundaries of the Southern California air quality planning areas to designate the reservation of the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation, California as a separate air quality planning area for the 1997 8-hour ozone National Ambient Air Quality Standard. The EPA is also proposing to approve the Tribe's tribal implementation plan for maintaining the 1997 ozone standard within the Pechanga Reservation through 2025 because it meets the Clean Air Act's and the EPA's requirements for maintenance plans. Lastly, based in part on the proposed approval of the maintenance plan, EPA is proposing to grant a request from the Tribe to redesignate the Pechanga Reservation ozone nonattainment area to attainment for the 1997 8-hour ozone standard because the area meets the statutory requirements for redesignation under the Clean Air Act.

DATES: Written comments must be received on or before February 5, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2014–0869, by one of the following methods:

Questions for the Record from Rep. Keith Ellison

The Honorable David Montoya, Inspector General, Office of the Inspector General,
U.S. Department of Housing and Urban Development

Question One: Intergovernmental Personnel Act

I support Intergovernmental Personnel Act appointments. According to the Office of Personnel Management, federal "agencies do not take full advantage of the IPA program which, if used strategically, can help agencies meet their needs for "hard-to-fill" positions." We need people with expertise to share their talents with federal agencies. I am troubled by the assertion that anyone who was ever a registered lobbyist working for a membership association of public housing agencies should be seen as being prohibited from serving in a leadership position at HUD.

- **Have there been IPAs who served in senior leadership positions at HUD?**

Although HUD would be the best source for the answer to this question, as IG Montoya indicated in his testimony, we have initiated a review of all IPAs coming from outside organizations since 2012, with the scope expanded to include two other individuals. Based upon the preliminary results of that review, an Assistant Secretary (Presidential Appointed Senate confirmed -PAS) came to HUD under an IPA while awaiting Senate confirmation. Debra Gross was a Deputy Assistant Secretary while she was an IPA assignee. Two people became Deputy Assistant Secretaries following the completion of their IPA agreements. We expect to include this information in our report later in the year.

- **Have there been IPAs who served in senior leadership positions at other agencies?**

Our office has not done any work on IPAs at other agencies.

Question Two: Inadequacy of Public Housing Funding

Congress continually underfunds public housing. We provide completely inadequate funds to replace outdated and damaged units. There is a capital shortfall of $26 billion yet our funding levels are less than $2 billion. The sequester has been especially painful resulting in 70,000 fewer families having housing vouchers.

The Minneapolis Public Housing Authority reports that only the year of the stimulus was our public housing agency fully funded. We have thousands of families in our community desperate for housing assistance. Our waiting lists are years long and closed to new families and individuals.

With this dire funding situation, I think it prudent that HUD looked outside the agency for ideas on how to streamline oversight of public housing while preserving rights for tenants.

I know from public housing officials in my own district that they feel that the requirements are onerous, costly and sometimes unnecessary.

The House of Representatives recently banned HUD from funding the physical needs assessment (PNA) requirement for PHAs. The House found that the PNA requirements on PHAs unnecessarily increases administrative burdens and appears to have no operational benefit for local housing programs.

- **In your comments you took issue with this change.**

We could not find where we took issue with this change.

- **Was limiting the PNA requirement one of the recommendations from the PHA streamlining working group established by the Deputy Director?**

In reviewing our work papers, we could not definitively answer this question. We reviewed a streamlining committee's tracking chart of issues and did not see PNA on it, but this document might not have been complete.

- **Do you disagree with the Congressional decision to eliminate its funding?**

We have not reviewed this decision to be able to draw a conclusion.

Question Three: Proposed Rule

On January 6, 2015, HUD published a proposed rule entitled *Streamlining Administrative Regulations for Public Housing Choice Voucher, Multifamily Housing and Community Planning and Development Programs*. There are many thoughtful and reasonable ideas in this January rule of which comments are being requested.

Many of those suggested reforms seemed to have been made based on suggestions of best practices from large and small public housing agencies, housing development officials and Congress. Many of us urged HUD to come up with ways to serve low-income families, the elderly and people with disabilities in ways that respected their privacy and did not require repetitive, unnecessary and costly reporting.

We agree and have tried to help HUD come up with more efficient, effective, and economical ways to better serve its clients. However, our office has seen instances where little or no analyses was performed and HUD has tried to remove requirements without first determining the necessity of the requirement or cost effectiveness of keeping versus benefit of removing the requirement.

There are many cost-saving ideas in the proposed rule including allowing public housing authorities to accept a tenant's signed self-certification of required community service,

With respect to the tenant's signed self-certification of required community service, our Office of Audit issued the following report.

http://intranet.hudoig.gov/sites/libraries/audits/Documents/2015-KC-0001.pdf

enacting an expedited grievance procedure and limiting the number of vacant units eligible for operating subsidies to 3%.

- **How many of the proposed changes included in the proposed rule, *Streamlining Administrative Regulations for Public Housing Choice Voucher, Multifamily Housing and Community Planning and Development Programs*, were derived from the Streamlining Committee?**

This would involve additional work because the scope of our review of Streamlining Committee ended when Debra Gross left HUD in early 2014. HUD would be in a better position to answer this question accurately.

Please describe which were proposed for comment by the Committee for comment from the public?

(Note – we understand this question to be describe the changes proposed by the committee that went to the public for comment). HUD would be in a better position to answer this question accurately. This would involve additional work because the scope of our review of Streamlining Committee ended when Debra Gross left HUD in early 2014.

- **Do you know that the proposed rule – and President Obama's budget request – suggested that public housing authorities should not be required to verify income annually for families on fixed incomes?**

In my community, annually reviewing income for seniors with dementia whose only income is Social Security is costly and unnecessary. Do you disagree with the recommendation to no longer verify income annually for families or individuals on fixed incomes?

Yes. The proposed rule does not eliminate the need for an annual recertification, but rather allows the housing authority to calculate future income using published COLA estimates. This could be more burdensome and result in more errors than obtaining what is readily available on the benefit statement. The proposed rule does not indicate how much savings could result from this change.

- **Are you familiar with another recommendation that rescinds the requirement that PHAs document the income earned on assets of less than $5,000?**

Yes. The proposed rule was in Federal Register /Vol. 80, No. 3 /Tuesday, January 6, 2015.

The interest or income earned on a small amount of assets would seem to cost more to find and report than the actual value of the income. Do you disagree?

Yes, it would seem so. However, we have not done any work to determine the cost savings from eliminating this requirement.

○