

**Testimony on
Safe and Decent? Examining the Current State of Residents'
Health and Safety in HUD Housing
before the
House Financial Services Subcommittee on
Housing, Community Development, and Insurance
by
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Chairman Clay, Ranking Member Stivers, and members of the Subcommittee, thank you for this opportunity to testify on behalf of Oregon Housing and Community Services (OHCS) and the National Council of State Housing Agencies (NCSHA) on our shared priority to ensure federally assisted housing is safe, decent, and affordable for the tenants who rely on it.

My name is Margaret Salazar, and I am the Executive Director of OHCS, Oregon's housing finance agency. We envision a future where all Oregonians can live free from poverty and pursue prosperity. OHCS administers federal and state programs that provide housing stabilization across the housing continuum — from preventing and ending homelessness, to assisting with utility costs, to financing affordable housing, to providing homeownership resources.

I also have the privilege of serving as the Secretary/Treasurer of NCSHA, which is a nonprofit, nonpartisan organization created by the nation's state Housing Finance Agencies (HFAs) more than 40 years ago to coordinate and leverage their federal advocacy efforts for affordable housing.¹ State HFAs, like OHCS, are mission-based, publicly accountable entities created under state law to promote and advance affordable housing in their states and communities. They operate as public or quasi-public agencies with statewide authority and qualify as Public Housing Agencies (PHAs) for purposes of administering federal housing assistance funded by HUD. Most have operated for several decades and have distinguished track records in successfully administering federal and state housing programs.

HFAs have their fingers on the pulse of the properties in their multifamily portfolios — including those with HUD financing — through stewardship, compliance monitoring, and asset management. Thirty-three HFAs, including OHCS, are also Section 8 Performance-Based Contract Administrators (PBCAs) for HUD's Project-Based Rental Assistance (PBRA) portfolio, providing direct oversight and monitoring of the regulatory compliance and physical condition of project-based Section 8 properties. This is where I will focus my testimony.

¹ NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

HUD relies on PBCAs, including state HFAs, to conduct ongoing administrative duties, under its oversight, for the majority of its PBRA portfolio. As of October 2019, PBCAs administered 15,516 of 17,315 total PBRA contracts, more than 88 percent of contracts. Congressional appropriators, most recently in the accompanying report to the Senate-passed FY 2020 appropriations bill, recognize how integral PBCAs are to HUD's efforts to be more effective and efficient in the oversight and monitoring of the PBRA program, to reduce improper payments, to protect tenants, and to ensure properties are well maintained.

PBCA responsibilities include conducting on-site management reviews of assisted properties; adjusting contract rents; and reviewing, processing, and paying monthly vouchers submitted by owners, among other tasks. OHCS has served as the PBCA in Oregon since HUD first piloted the PBCA Initiative in 2000. As the PBCA in Oregon, OHCS partners with HUD to ensure PHAs and private property owners comply with all statutory requirements pertaining to the PBRA program. OHCS also partners with PHAs and private property owners to ensure that all tenants are provided with quality affordable housing that is well maintained and well managed. Oregon's PBRA portfolio includes 254 properties with 9,704 homes for families, amounting to approximately \$5.9 million in total monthly subsidy payments.

PBCAs are an important touchpoint for tenants, responding to tenant concerns in a timely manner and acting as an "early warning system" for HUD monitoring and enforcement when properly engaged. HFA PBCAs also take proactive approaches to reduce non-compliance with program rules and leverage their affordable housing resources to improve and preserve properties in their states.

OHCS has a shared interest in the preservation of affordable properties with direct subsidy. We utilize the FHA-HFA 542(c) Risk Sharing Program, the HOME Investment Partnerships (HOME) program, and federal Low Income Housing Tax Credit (Housing Credit) allocations to ensure Section 8 properties remain affordable and in good condition throughout their long-term affordability periods. Within Oregon's Section 8 portfolio of 254 properties, there are 97 with Housing Credits, six with 542(c) Risk Sharing, and 19 with HOME funds, combined representing 48 percent of properties.

Oregon is also investing state resources in preservation. Governor Kate Brown and the Oregon State Legislature continue to make significant investments in affordable housing preservation, recognizing that preserving existing affordable housing is a critical part of addressing our housing crisis. OHCS received \$25 million from the Oregon Legislature this biennium to reinvest in these homes and ensure they will be safe, affordable, and available for the next generation. In addition, OHCS administers the Publicly Supportive Housing Preservation Program (PuSH). PuSH regulations require owners of affordable housing to give the local government, state government, or an approved designee an opportunity to purchase publicly supported housing in order to preserve the property's affordability. PuSH regulations require that these entities have the right of first refusal.

The shared interest in preservation benefits tenants and private property owners by reducing administrative impact on them, while increasing levels of oversight. Most HFA PBCAs can also help bridge the gap towards future funding by accessing replacement reserves and new funding to address capital needs. This results in well-maintained, financially stable properties that meet the immediate and long-term interests of tenants.

Despite these successes, PBCAs and their portfolios have been impacted by years of program uncertainty due to bid protests, funding constraints, inconsistent federal oversight, and HUD's long, complicated process of developing a procurement framework for PBCAs. For example, since 2011, HUD prohibited PBCAs in 42 states from conducting annual Management and Occupancy Reviews (MORs) — a critical tool of property oversight — while bid protests took place. HUD finally reinstated MORs in 2016, but even then PBCAs could conduct only a limited number of MORs each year because of HUD budgetary constraints.

The PBCA program now faces a critical juncture as HUD will soon release a new procurement solicitation detailing with whom it intends to contract to be PBCAs, their jurisdiction, and the scope of work. While HUD will provide Congress or stakeholders no information on this upcoming plan (citing rules on procurements in development), we hope that HUD has taken into consideration the constructive feedback it received after its first attempt at procurement and that the new solicitation will not suffer from the shortcomings of the previous attempt.

The previously proposed plan failed to comply with statutory requirements that HUD contract with PHAs. HUD sought to bifurcate the work done by PBCAs between regional and national contractors, away from a successful, state-based approach. If HUD had proceeded with that plan, it would have added undue risks to the federal government, negatively impacted the health and safety of the 1.2 million tenants who rely on PBRA, and endangered affordable housing preservation efforts throughout the country.

Congress must protect and improve the PBRA portfolio for the tenants who rely on it by ensuring that, as HUD prepares to release a new solicitation for PBCA contracts, it does not make mistakes similar to the first PBCA draft solicitations. This is why we urge this Subcommittee to support the discussion draft that further clarifies HUD's requirement to contract with PHAs for this work and to seek partners that have experience in addressing tenant concerns and preserving this critical stock of affordable housing throughout their respective states.

PBCAs Play a Critical Role in Property and Management Oversight

Today, more than 1.2 million low- and very-low-income households live in homes with PBRA. Two-thirds (66 percent) of these households include someone with a disability or who is elderly, and 28 percent are households with children. PBRA is intended to provide these households with decent, safe, and sanitary housing for rents they can afford. Without it, many of

these families would face worst-case housing needs, meaning they would pay more than half of their income for rent, live in severely inadequate physical conditions, or both.

It is important to state that most PBRA properties are in good physical condition and provide tenants with safe, healthy, and affordable homes. According to HUD, nearly 64 percent of the 17,315 properties in its PBRA portfolio are considered low-risk, 32 percent are medium-risk and less than 5 percent are troubled or high-risk properties; 95 percent have passing (60 and above) REAC scores; and 92 percent received satisfactory or above ratings on their most recent Management and Occupancy Reviews. This data, and the tenant and media reports we have heard about too often, indicate though that there are outliers.

It is essential that those outlier properties are improved and potential future problems are prevented. Every property's situation is unique, but factors that contribute to deteriorating conditions are increasing capital needs without enough resources to address them, problems with the REAC protocol, and issues with HUD using ineffective and unqualified REAC inspectors.

We understand HUD is conducting a wholesale reexamination of the REAC protocol, including replacing some inspectors. During a May 21 hearing of this full Committee, HUD Secretary Carson discussed this work and also noted that HUD is looking at the way the Department conducts the procurement of these inspectors, suggesting that HUD contracting with "the lowest bidder" meant "sometimes you get what you pay for. So you obviously have to be cognizant of that."

This is why a holistic, tenant- and asset-centric approach to oversight is so important. It is also why PBCAs are critical partners in ensuring early identification of problems and intervention when needed. HUD restored its MOR process in 2016, enabling PBCAs to look more deeply into issues affecting property operations and to follow up to ensure physical inspection findings have been resolved. As I stated before, though, PBCAs have only been able to conduct MORs of only roughly 43 percent of the portfolio every year since. This is because HUD does not have the budget to conduct more MORs on a more regular basis.

In Oregon, we monitor the physical condition of PBRA properties by tracking REAC inspections, the results of which are used to conduct MORs. OHCS staff monitors HUD systems to confirm when physical inspections are conducted and if any exigent health and safety deficiencies were observed. OHCS staff also obtains copies of REAC physical inspection reports completed by HUD REAC inspectors. During property visits while conducting MORs, OHCS staff follow up on REAC physical inspection report findings to ensure exigent and other critical deficiencies have been corrected. In addition, staff will communicate to the property owners any physical deficiencies observed by staff during the property visits.

PBCAs Are an Important Touchpoint for Tenants

One of the most important roles of a PBCA is to address tenant concerns regarding the physical and operational well-being of the properties in which they live. I'd like to take this opportunity to share a few ways in which PBCAs do this, and how HUD can engage PBCAs more readily to do this work.

First, PBCAs host hotlines tenants can call regarding health and safety concerns, management concerns, and/or questions about rent calculations and beyond. PBCAs are contractually required to respond to calls about life-threatening health or safety concerns within one hour, and other concerns within two days. PBCAs not only respond but they engage with the property owner and/or management and HUD to resolve the issues for tenants.

At HFA PBCAs across the country, tenants are also afforded the opportunity to meet in person or by phone to work through issues or explain program requirements. In Oregon, OHCS staff are available to tenants, applicants, community members, tenant associations, or anyone who would like to report health and safety concerns. To support access, OHCS provides a toll-free hotline number to tenants, which is posted at all Section 8 properties. Health and safety concerns can also be submitted online through our website or submitted in writing to OHCS's office. All health and safety concerns are taken seriously and responded to in a timely manner until concerns are corrected or mitigated by the property owner.

For example, OHCS receives calls from tenants living in Section 8 properties for the elderly and persons with disabilities voicing concerns about physical deficiencies in common areas regarding exterior doorways and elevators, or inadequate lighting in hallways and on property grounds. Often, tenants fear retaliation for having reported health and safety concerns. In these cases, OHCS will maintain confidentiality while alerting property owners of concerns and follow up until repairs are mitigated or corrected.

OHCS staff also engage tenants to report health and safety concerns by issuing a direct-mail survey to tenants, the results of which are held confidentially and used to help OHCS staff conduct annual MORs. In addition to reporting concerns, the survey assists with the assessment of tenant and property management relations.

Under HUD's current model, PBCAs handle the administration of all tasks for their respective jurisdictions. This means tenants have one point of contact, and HUD and governmental (congressional, state, and local government) staff know whom to contact in order to communicate important policy and regulatory guidance or to ask property-specific questions. While communication around this structure can be improved, the comprehensive scope of work is the best way to ensure a tenant- and asset-centric approach to oversight.

PBCAs' comprehensive scope of work also allows information to flow smoothly across PBCAs; if data impacts multiple tasks, PBCAs can respond holistically to ensure consistency and

timeliness of processing for all core tasks. As the sole provider of HAP contract administration services within their jurisdictions, PBCAs are accountable. Separating and assigning tasks among national and regional entities, as proposed by HUD in 2017, would greatly diminish these benefits and increase program complexity for tenants, property owners, and other stakeholders.

HFA PBCAs also proactively reduce noncompliance by training property owners in their states on a regular basis, and are regarded by the industry as a primary resource of expertise on matters from financing and maintenance to fair housing.

For example, OHCS partners with Oregon's local Affordable Housing Management Association to co-sponsor national training events, and OHCS staff provides customized training for PHAs and private owners. OHCS staff also provides ongoing technical assistance and guidance to Section 8 owners on all matters related to programmatic compliance, even beyond the scope of our redacted PBCA contract. Because OHCS is a Housing Finance Agency, we monitor and inspect properties with other federal funding sources. In fact, OHCS continued to visit more than one-third of Oregon's Section 8 portfolio in the years PBCAs were not under contract to perform Management and Occupancy Reviews.

Finally, due to the preservation efforts in which HFAs engage, HFA PBCAs have the ability to streamline inspections and other processes, thus creating less of a burden on tenants.

The efficiencies and tenant touchpoints I've listed above would be lost if HUD ignores the Housing Act of 1937 (Housing Act) and contracts with non-PHAs at regional and/or national levels. The burden of reconciling inconsistencies and service gaps will inevitably fall on the owners and management agents, and, ultimately, the tenants. Dividing these tasks will also necessitate coordination between contractors and likely lead to higher administrative costs and require more HUD oversight. It will sow confusion and could cause slower response times.

HUD has good partners in place with PHAs as PBCAs, sharing HUD's mission, and HUD should more readily use them instead of upending the entire program. Having good PBCAs in place is more critical now than ever because HUD staffing levels, in the field and at headquarters, have been challenged for years and appear to be only more challenged going forward. Additionally, HUD's Multifamily Transformation Initiative that took place a few years ago consolidated field offices to just 12 across the country. HUD has less of a state presence, necessitating stronger partners there to ensure properties are well maintained and tenants' well-beings are considered.

Future of the PBCA Program

Congress must protect and improve the PBRA portfolio for its tenants by ensuring that, as HUD prepares to release a new solicitation for PBCA contracts, it does not make mistakes similar to the first PBCA draft solicitations. Specifically, Congress must ensure HUD complies

with the Housing Act's requirement that it contract with PHAs for the administration of federal rental assistance.

HUD's previous procurement plans suggested it was circumventing this legal obligation by ending the PBCA program and becoming the "sole government party to all HAP contracts" while contracting out all relevant PBCA functions. Hiring vendors to perform all activities associated with administering rental assistance contracts is not consistent with the Housing Act.

Limiting applicants to PHAs is also a reasonable and appropriate method of ensuring HUD's partners are driven by the same objectives and interests as HUD and will likely result in less intensive HUD training and capacity-building requirements and minimize HUD's supervisory responsibilities. Congress should ensure state-based contracts and a comprehensive scope of work to ensure the tenant connections are not lost.

This is why we urge this Subcommittee to support the discussion draft that further clarifies HUD's requirement to contract with PHAs for this work and seek partners that have experience in addressing tenant concerns and preserving this critical stock of affordable housing throughout their respective states.

Thank you for your commendable efforts to support affordable housing and address the critical health and safety needs of those who rely on it. I am honored to have had this opportunity to testify before the Committee to provide NCSHA's and my own state's perspectives on the effectiveness of the PBCA program in addressing tenant health and safety concerns, and on how the Committee can strengthen the program to ensure continuity of these critical goals. NCSHA and its member HFAs stand ready to assist you in any way we can.