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NAESCO offers the following recommendations to HUD, based on the discussion during our May 27 meeting. Our recommendations are summarized in the table below and described in more detail in the following pages.

Action Keys: *A= Administrative; R=Regulatory; L=Legislative*
Timing Keys: *S=Short term, less than 1 year; M=Medium term, 2-3 years*

Summary of EPC and Solar Program Recommendations	**Action**	**Timing**	**Notes**
1. Procurement and Structure of RFPs for EPCs			
Include in pending EPC Notice the following:			1
Integrate solar and EE measures in same RFP	A+R	S	
Enable long-term contracts for solar & maintenance	A+R	S	1.1
Simplify EPC M&V requirements	A	S	
Include GHG baseline and reductions in M&V	A	S	
Streamline internal standard operating procedures	A	S	
Update HUD Procurement Handbook consistent with 2 CFR 200	A	S	1.2
2. Improving Solar PV Implementation and Integrating Solar PV with EPCs			2
Extend EPCs to 25 years, consistent with DOE rules	L	M	
Improve and update RFPs for standalone solar PV	A	S	
Clarify the applicability & application process for Rate Reduction Incentive	A	S	
Modify utility allowance policy - flexibility, access to solar on tenant meters	A+R	S	
3. Leveraging Impacts of Future Capital Grants (e.g., Infrastructure legislation)			3
Provide Incentives for integrating grants with EPC debt financing	A+R+L	M	
Address both PIH and Assisted Housing (RAD properties covered)	A+R+L	M	
Allow harvesting of utility savings streams when coupled with EPCs	A+R+L	M	
4. Training, marketing, promotion of EPCs			4
Empanel HUD Working Group (inc. Field Offices) to address **1.** above	A	S	
Develop training protocols for Field Offices & PHAs	A	S	
Feature integration of EPC and RAD strategies	A	S	
Enhance website with positive messages about EPCs	A	S	
Include case studies and testimonials from PHA managers	A	S	
Develop coordinated messaging strategies with CLPHA, PHADA, NAHRO	A	S	
5. Accelerate EPC uptake among small PHAs			5
Establish internal HUD working group to advance promotion, marketing	A	S	
Encourage aggregation of small PHAs	A	S	
Incorporate funding sources for resilience, EV charging stations, microgrids	A	S	

6. Reinstatement of Pay for Success Assisted Housing Demonstration			6
Allow Capital Grants to harvest savings	R+L	M	
Extend term to 20 years	R+L	M	
Allow management fee for property managers	R+L	M	
Standardize rules for the use of PACE financing	A	S	6.1
7. Public Comments on Revisions to PIH Notice 2011-36			
Formal notice in Federal Register	A	S	7

Discussion of Proposed Revisions to Energy Performance Contracting Policy

1. Procurement and Structure of RFPs for EPCs

Our proposals to revise current policy are focused toward maximizing the benefits of technology, innovation and leveraging existing resources, public and private market funds to promote sustainability, greenhouse gas emissions reductions, environmental quality and equity, and green jobs creation in public housing. Proposals get back to Congress' original intent to provide PHAs the full financial benefit of any reduction in cost of utilities. Our proposals require HUD to revisit the regulations and guidance for specific revisions, and we believe that HUD has been granted broad discretionary authority to implement a number of these revisions. https://www.hud.gov/program_offices/general_counsel/HUD-Rulemaking. Furthermore, there are successful precedents for our proposals in the Moving-to-Work and Small-Rural Frozen Rolling Base Program that could be adopted.
For the EPC program, the proposals are:

- Permit a PHA to retain 100% of the utility cost savings, consistent with current law, including from use of operating or capital funds.
    - Permit PHA to retain 100% of savings generated by the add-on subsidy incentive.
    - Permit PHA to retain 100% of Frozen Rolling Base (FRB) and Resident Paid Utilities (RPU) achieved savings.
    - Permit PHA to retain 100% of documented savings for Rate Reduction Incentive (RRI) savings.

  Examine and correct current practices, including windfall/shortfall provisions in the regulations and approval procedures to ensure compliance with statute.
- Permit equipment replacement if it can be demonstrated that the new technology can achieve at least a 15% increase in savings over existing equipment.
- Permit the use of excess savings for any sustainability-related operating or capital fund project.

> **United States Housing Act of 1937 as Amended by the Quality Housing and Work Responsibility Act of 1998**
> ***SEC. 9. PUBLIC HOUSING CAPITAL AND OPERATING FUNDS***
> (C) TREATMENT OF SAVINGS.— *The treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.*

- Permit the use of discrete maintenance savings in the cash flow of an EPC.
- Deliver training on EPCs, including on the effective use of Capital fund (coming from Infrastructure/safety net funding Bill) in combination with EPC to optimize use of the existing EPC vehicle to get projects readily implemented once the funding is allocated.

- Seek to waive current restrictions addressed in proposals 1-7 as part of the final legislation and funds appropriation language.

1.1 **Permit PHAs to initiate service contracts with > 5-year terms**

Permit PHAs to initiate service contracts targeted to sustainability/designed to preserve PHA's housing portfolio (e.g., maintenance, solar, operations, utilities, waste management, etc.) with terms that exceed 5 years. We believe that current law provides for HUD to allow service contracts longer than 5 years, but no longer than 20 years and that the HUD Procurement Handbook contains the only 5-year prohibition.

> ***Citation: Procurement Handbook 7460.8 Rev 2 (2007)-*** *Current HUD procurement guidance contained in HUD Handbook 7460.8 REV 2, restricts multi-year service contracts to 5 years, with the exception being EPCs. Of current relevance to PHA's procurement are 2 CFR Part 200, introduced in 2014; 24 CFR 85.36 prior PIH Procurement regulations; and the PIH Procurement Handbook. We see no federal statutory or regulatory prohibition to contract terms that exceed 5 years. The only citation of a contract term limit is in the PIH Procurement Handbook, which itself also states, "A Field Office may approve contracts in excess of five years if it determines there is no practical alternative."*

The HUD Management and Occupancy Division is the responsible organization and the author of the HUD Procurement Handbook. We suggest an update to the HUD Procurement Handbook that includes the entire 2 CFR 200 to eliminate confusion in enforcement. We believe that HUD could interpret that, for example, solar projects involving construction would qualify for 100% RRI for the 20-year maximum contract term. EPACT provisions in conjunction with the enabling statute for EPCs appear to clearly provide for this. Below is the pertinent section of US Code. Citation: § 1437g TITLE 42—THE PUBLIC HEALTH AND WELFARE Page 3435 (**Bold highlights and punctuation added for readability**).

> **(C) Treatment of savings:** *(i) In general the treatment of utility and waste management costs under the formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to undertake energy conservation improvements in one or more of its public housing projects.* **(ii) Third party contracts:** *Contracts described in clause (i) may include contracts for equipment conversions to less costly utility sources, projects with resident-paid utilities, and adjustments to frozen base year consumption, including systems repaired to meet applicable building and safety codes and adjustments for occupancy rates increased by rehabilitation.* **(iii) Term of contract:** *The total term of a contract described in clause (i) shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating system replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits*. **(iv) Existing contracts:** *The term of a contract described in clause (i) that, as of December 26, 2007, is in repayment and has a term of not more than 12 years, may be extended to a term of not more than 20 years to permit additional energy conservation improvements without requiring the re-procurement of energy performance contractors.*

We believe that Section 9 and HUD regulations already permit a broader interpretation of the applicability of long-term service contracts than HUD espouses in practice and urge that HUD adopt policies and practices to provide for extended-term service contracts and PPAs targeted to sustainability, especially for solar and renewable energy, design-build projects addressing utility-related infrastructure, both in conjunction with EPCs and separately.

2. Rate Reduction Incentive for Solar & Other Supply-related Programs

While most solar projects will require the use of Renewable Energy Credits (RECs), the Rate Reduction Incentive (RRI), included in law and regulation since 1991, need also be addressed for its applicability to both renewables and clean energy supply initiatives. While at least two notices have addressed the RRI (PIH 2014-18 and PIH 2019-24) there continues to be a great deal of confusion at field offices and PHAs about not only the contract term “waiver” HUD currently requires, but also on the applicability, procedures for review and the application process for the RRI, including when and how to submit for Operating Subsidy processing. HUD needs to address this formally to bring incentives for solar/renewable energy to public housing.

3. Leveraging Impacts of Future Capital Grants (e.g., Infrastructure legislation)

Permit PHAs to pledge its Capital and Operating reserve funds for use during the term of the PHA-HUD agreement to guarantee the payment of debt service or service fees, when projected utility savings are not adequate to cover the debt or service costs for critical infrastructure, resident health or safety, code compliance or energy conservation projects for up to 20 years.

- There is precedent under the Capital Fund Financing Program (CFFP), a PHA may borrow private capital to make improvements and pledge, subject to the availability of appropriations, a portion of its future year annual Capital Funds to make debt service payments for either a bond or conventional bank loan transaction. There is also precedent for HUD approving CFFP installations in conjunction with EPCs. The loans or bonds are obligations of the PHA. HUD does not guarantee or insure these loans or bonds. The PHA obligation is subject to the availability of appropriations by Congress and compliance with statutory and regulatory requirements. Generally, no more than 33% of the PHA's annual CF grant adjusted for any proposed or planned demolition or disposition or other activity that would cause a reduction of the PHA units count or otherwise reduce CFP Funds appropriated or available to the PHA such as a voluntary compliance agreement. All pledges are subject to the availability of appropriations. A PHA may pledge up to 100 percent of any projected replacement housing factor (RHF) grants for debt service payments, provided that not over 50 percent of its overall projected Capital Fund grants (including formula funds and RHF funds) are pledged.

4. Training, marketing, promotion of EPCs

With the wealth of current opportunities and programs available under long-term services agreements with ESCOs, utilities, and State and Local agencies, training on energy services agreements is now more important than ever for public housing.

We suggest that HUD go back to the type of training curriculum they employed prior to RAD to promote the EPC program rather than focus its EPC training strictly on enforcement and limitation on savings.[1]

For over a decade, HUD sponsored trainings for PHAs on utility conservation/EPCs. Prior curricula for training covered 1) HUD’s Energy Incentives under the Operating Fund; 2) Section 3 Green Jobs; 3) Addressing Home Health; 4) Developing & Issuing RFPs: Utility Analysis and Site Selection; Evaluating RFP Responses & Interviewing the ESCOs; 5) Operations & Green Maintenance; 6) Resident Engagement & Energy Education; 7) Negotiating Audit & Services Agreements, 8) Securing Grants and Project Financing.

[1] By HUD’s own estimates, the RAD program is expected to impact only approximately 1/3 of the 2012 PHA portfolio by 2030.

This curriculum needs to be updated and re-instated to meet current needs and opportunities, including on the effective use of Capital fund (coming from Infrastructure/safety net funding Bill) in combination with EPC.

5. Acceleration of EPC uptake among small PHAs

We suggest that HUD maintain the intent of the PUBLIC LAW 115–17, May 24, 2018, for small rural PHAs that requires HUD notification, not HUD approval of individual projects. Section 209 (b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act) was designed for Small Rural PHA to have ease of entry, regulatory relief, benefit from 100% of savings, flexibility in source of funds, and participation by simple notice. Section 209 (b) SR-FRB program should be flexible, based on successful precedents, and promoted through HUD training and the HUD Blast. For non-EPC, specifically small and rural PHAs, using the Small Rural Frozen Rolling Base is an excellent approach for moving small PHAs to a more efficient future. Training through regional NAHRO conferences is an excellent partnering opportunity and method to move the needle on this initiative. In small PHAs, the executive director is also the accountant, rent collector or maintenance director. They need to be educated through promotion, training, and other media to get familiar with the program. HUD did an excellent job in developing the Notice (2020-30, 2021-17; 2021-04), however, the 1,200 PHAs that could take advantage, may never hear about the benefits without an effective HUD outreach program both PHAs and industry experts. The Operating Fund portal needs to be reviewed for functionality for this program.

6. Reinstatement of Pay for Success Assisted Housing Demonstration

There was a pilot program put into law that would reduce utility spend and improve another portion of the federally subsidized housing, Public Law 114–94, December 4, 2015, 129 STAT. 1793, Paid for Success Pilot Program. The program expired without being implemented. The key provisions of the law were: Contingent payment program with a maximum aggregate of 20,000 units. HUD will enter into contracts with a third-party provider who will supply capital and perform the improvements. HUD will only make payments to the third party when savings have been proven on an annual basis utilizing established Measurement and Verification methodology.

Recommendation: Re-authorization of the law with the following provisions

- Minimum term of 5 years
- That the non-funded NOFA be released within 90 days after reauthorization
- Project term extended to a maximum of 20 years
- Mix of funding sources
- Capital Contribution up to 40% without return of savings
- Remove unit count limit
- Designate HUD funding source
- Remove requirement for environmental assessments

6.1. Standardize the rules and regulations to **facilitate the use of PACE financing in Section 8.** There have been some projects in California, and HUD is conducting workshops in other regions. But when Section 8 projects do traditional energy efficiency with reserves, they do not get to keep the savings. The savings offset increases in other operating costs and reduce their ability to request market adjustments to their contract rents. Properties with multiple investors can be more problematic.

7. Public Comments on Revisions to PIH Notice 2011-36

We recommend that HUD seek comments regarding its revised policies to the current PIH Notice 2011-36 by publishing the revised notice in the Federal Register. Energy Performance Contracting policy impacts the operating subsidy eligibility of over 300+Public Housing Agencies nationwide. To further promote and educate over 3,000 Public Housing Agencies regarding the opportunities to reduce energy consumption and enhance resiliency, it is further proposed that the notice be disseminated to all eligible grantees and housing and community development providers and professionals throughout the United States.