

To:

June 26, 2024

Ms. Lael Brainard

Director
National Economic Council
1600 Pennsylvania Avenue NW
Washington, DC 20500

Ms. Adrienne Todman

Acting Secretary
Office of the Secretary, Department of
Housing and Urban Development
451 7th Street, S.W., Washington, DC
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Mr. Ali Zaidi

Assistant to the President &
National Climate Advisor
The White House, Office of Domestic
Climate Policy
1600 Pennsylvania Avenue NW
Washington, DC 20500

Mr. John Podesta

Senior Advisor to the President for Clean
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The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Director Brainard, Acting Secretary Todman, Mr. Zaidi and Mr. Podesta:

On behalf of the undersigned agencies and organizations, we are writing to ask the Administration to consider enacting changes to HUD regulations and guidance to unlock the full potential of on-site solar energy for our nation's public housing residents. The Biden-Harris Administration has set ambitious goals to expand on-site solar production for residential buildings and has taken unprecedented steps to enable local communities to do so, most recently through \$7 billion awarded to Solar for All grantees by the EPA under the Greenhouse Gas Reduction Fund.

We applaud the Administration for its support of this crucial work and its focus on ensuring low-income residents benefit from these investments. We know that the Administration intends for all its agencies to be working as one in these endeavors, and would not want to see HUD regulations dramatically reduce the efficacy of new solar development tools for public housing communities. We therefore write to you today with recommended changes to help further your efforts by making sure our nation's Public Housing Authorities can make full use of these new opportunities. Current policy disadvantages PHAs insofar as it makes certain solar projects that would otherwise benefit public housing tenants economically infeasible, leaving behind low-income residents and harming our environment. Additionally, current policy discourages PHAs from pursuing

opportunities to take advantage of crucial reforms to public-led energy financing such as elective pay. We propose regulatory and guidance changes to permit PHAs to more easily finance and develop on-site solar and maximize the impact of Solar for All funds. These changes would allow PHAs to retain the full savings of HUD-administered incentive programs for undertaking renewable energy and energy efficiency investments.

In the public housing program, any reduction in utility expenses is typically offset by a future reduction in operating fund subsidy provided by HUD, reducing or eliminating entirely the incentive of efficiency improvements. To incentivize investments in energy efficiency, HUD has several programs to enable PHAs to retain the savings from energy- and water-efficient upgrades¹. These programs, however, generally restrict the savings PHAs can retain from developing on-site solar to 50% of the cost savings they achieve.

This regulatory language hampers the Administration's goal of rapid renewable energy deployment, particularly in disadvantaged communities, and directly inhibits the success of Solar for All, which requires that grantees deliver a minimum of 20% of savings to affected households as either a direct financial benefit or a direct non-financial benefit equivalent². Being able to retain only 50% of savings from the start, due to current HUD rules, makes it economically infeasible to deliver 20% savings as a household benefit. Many solar projects will not pencil out under these competing policies, or may be feasible only if no community benefit is delivered. Under this framework, PHAs may choose either not to develop solar, to pursue solar models that shift greater profits to third-party entities, or to entirely avoid taking advantage of federal programs that promote community benefits.

The recommendations accompanying this letter outline four specific changes that could more rapidly spur installation and uptake of on-site solar on public housing properties across the country. The first, a regulatory change, is a direct solution that may take more time to implement. The rest, all of which are guidance changes, could be more quickly implemented and have precedent in previous HUD notices to PHAs concerning on-site renewable energy deployment. We are happy to meet with you to discuss these issues further at your earliest convenience.

¹ Energy Performance Contract (EPC), Rate Reduction Incentive (RRI), Small Rural Frozen Rolling base (SR-FRB), and the Utility Partnership Program (UPP). See:

https://www.hud.gov/program_offices/public_indian_housing/programs/ph/pheb

² See page 12 of Solar for All NOFO - "Meaningful Benefits of Residential Rooftop and Residential-Serving Community Solar" <https://www.grants.gov/search-results-detail/348957>

Sincerely,



Paul Williams
Executive Director
Center for Public Enterprise



Priscilla MacKenzie Bok
Administrator
Boston Housing Authority



Lisa Bova-Hiatt
Chief Executive Officer
New York City Housing Authority



Cynthia Spence
Director of Modernization, Planning &
Development
New Bedford Housing Authority



Donna Brown-Rego
Executive Director
MassNAHRO

Michael J. Johnston, Esq.
Executive Director
Cambridge Housing Authority

Heather Takle
Chief Executive Officer & President
PowerOptions

Attachment:

Recommendations

Change in regulation

(1) Permit PHAs to retain up to 100% of savings from participation in the Rate Reduction Incentive (RRI). HUD should amend the regulation found at [24 CFR § 990.185\(b\)](#) to read:

“If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas or geothermal energy, development of energy projects on PHA land or buildings, administrative appeals, or legal action to reduce the rate it pays for utilities, then the PHA will be permitted to retain up to one-half one hundred percent of the annual savings realized from these actions.”

This change would give HUD the flexibility to allow PHAs installing on-site solar to retain 100% of savings via the RRI without having to pair it with any other incentive program, and would encourage PHAs to support deployment of new energy projects. This offers the most direct way to solve the challenge facing PHAs. While this is the preferred solution, enacting the change would require formal rulemaking and may not be completed quickly enough to allow the current set of Solar for All grantees to take advantage.

Change in guidance

(1) Explicitly permit PHAs to retain 100 percent of savings for an on-site solar RRI if proposed with a concurrent Energy Performance Contract (EPC). HUD should revise [Notice PIH 2023-17](#), Scenario 9-8, to permit PHAs to retain 100% of the annual savings they realize from an on-site solar RRI if proposed with a concurrent EPC, including for PHA-owned projects. HUD’s current language specifically limits savings from on-site solar to 50 percent savings, even if proposed with a concurrent EPC. If HUD does not revise the scenario, it should be stricken from the guidance in its entirety. Permitting up to 100% of savings for on-site solar generation with a concurrent EPC would be consistent with policy established in 2014 under PIH-2014-18, which

emphasizes the need to properly incentivize PHAs to achieve maximum utility cost savings for their residents.³

HUD’s most recent Rate Reduction Incentive guidance does not preclude full retention of savings under third-party ownership models, when executed in conjunction with an EPC.⁴ Recent HUD guidance appears to suggest HUD would permit owners up to 100% savings for off-site solar.⁵ This results in a strange incentive structure where a PHA would build solar on-site to sell energy or credits to other non-PHA buildings in order to achieve a savings level over 50%, or even sell energy or credits to another PHA property simply to avoid the arbitrary 50% “on-site” limitation. Alternatively, a PHA could lease their rooftop for cash payments and claim no energy credits or savings whatsoever. A more logical and streamlined solution is to allow PHAs to retain full utility savings, which are tied directly to property expenses, and to invest those savings in both improving housing quality and provide tenant savings or allowable community benefits, such as expanded internet access, improved food security, or other community amenities that could not otherwise be financed.

However, conventional energy performance contracts (EPCs) are not the standard practice for on-site project development within the solar industry—Power Purchasing Agreements are. The next recommendation considers how HUD can update its guidance to better reflect the role PPAs play in on-site solar development.

(2) Expressly Allow Power Purchasing Agreements (PPAs) to qualify as an EPC under certain scenarios, or create another Energy Conservation Measure (ECM) pathway for PHAs to retain 100% of savings. HUD should issue guidance via a memo or revision to [PIH-2011-36](#) to affirmatively permit Power Purchasing Agreements (PPAs) to qualify as an Energy Performance Contract (or as an Energy Conservation Measure) insofar as PPAs constitute “a shared savings agreement” with a private energy services company.

³ See page 10 of PIH-2014-18: <https://www.hud.gov/sites/documents/PIH2014-18.PDF>

⁴ See scenario 9-3 of PIH-2023-17:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-17pihn.pdf>

⁵ See memo from Deputy Assistant Secretary Danielle Bastarache on the treatment of solar credits in master metered public housing dated August 2, 2023:

<https://www.hud.gov/sites/dfiles/PIH/documents/PH%20Memo%20Community%20Solar%20Credits%20in%20Master%20Meter-Final%20Bldgs%202030801.pdf>

PPAs are a more efficient and cost-effective way to finance and deliver on-site solar than EPCs are, and they are the standard practice for on-site project development within the solar industry.⁶

Where PPAs (1) deliver energy conservation measures, (2) result in the construction of a solar facility, (3) are financed by an entity other than HUD, (4) do not exceed a term of more than 20 years, and (5) meet competitive procurement requirements or appropriate exceptions, they should be treated as HUD currently treats EPCs, i.e. accepted as Energy Conservation Measures and therefore allowed to retain 100% savings. The Department of Energy considers renewable energy to be an energy conservation measure. There is no reason HUD energy policy should not be consistent with that of other federal agencies.⁷

HUD and federal agencies should be aware that a PHA-affiliated solar entity may be optimal as an arrangement to coordinate a housing authorities' filings with regard to elective pay credits and other solar incentives. As such, a PHA-affiliated entity should be one, expressly authorized vehicle through which a PHA can develop solar and retain full credits.

(3) Expressly allow PHAs to retain 100% savings from on-site solar, even if such a project is not “behind the meter.” PIH-2011-36 and other guidance do not directly address whether solar needs to be installed “behind the meter” or “in front of the meter” in order to retain its full value.⁸ In some consultations with PHAs, HUD staff may have interpreted guidance to only allow “behind the meter” solar. HUD should amend the notice or issue separate standalone guidance clarifying that both behind-the-meter and

⁶ PPAs, or power purchase agreements, in the context of on-site rooftop solar installations are contracts between a rooftop solar developer and a homeowner wherein a homeowner agrees to purchase power from the rooftop solar developer instead of leasing or purchasing the solar system outright. A PPA usually substantially lowers the rate that the homeowner pays to their local electric utility; the developer recoups their investment via the homeowner's electricity bill savings.

⁷<https://www.energy.gov/femp/articles/doe-guidance-statutory-definition-energywater-conservation-measures-ecms-and>

⁸ “Behind the meter” solar is any solar energy-producing asset installed on a property such that any electricity it generates is consumed directly and immediately on the property, decreasing the electricity the property needs to “import” from off-site sources—electricity which would come through the property's electricity meter, or “in front of the meter,” and would be managed by and charged for by the local electricity utility.

front-of-meter solar is eligible to retain 100% of savings, assuming such projects meet all other requirements. Whether it is positioned behind the meter or operated as a standalone system, on-site solar would meet the Department of Energy guidance for energy conservation measures.

Limiting full benefits to only behind-the-meter solar creates an artificial constraint that can inhibit some PHAs from deploying solar. For example, a recent commissioned analysis of the Boston Housing Authority's solar capacity suggests that solar projects constructed with standalone meters will produce greater savings, due in part to the Authority's aggressive efforts to reduce electric rates and the lower value of electricity that would be produced from a behind-the-meter project. When it comes to efforts toward energy generation and associated conservation, HUD should be agnostic toward meter positioning to allow PHAs the greatest flexibility.

Time is of the essence in making these clarifications, especially in light of recent federal grant-making. For example, the Boston Housing Authority is a formal sub-participant in the successful Solar for All application by the Commonwealth of Massachusetts, in order to advance the Justice40 goals of the Inflation Reduction Act. The plan is to serve public housing residents with solar, not just in Boston but via funding and technical assistance to other smaller PHAs across the state. Yet the speedy execution of that work will be dramatically hindered if HUD guidance is not brought into clearer alignment with the Administration's ambitious goals.