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Office of the Secretary
U.S. Department of Housing and Urban Development
Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Re: Docket No. FR-6520-P-01; RIN 2501-AE15 — Establishing Flexibility for Implementation of Work Requirements and Term Limits

Dear Sir or Madam:

I. Introduction and Interest of Commenter

The Wisconsin Institute for Law & Liberty (“WILL”) respectfully submits this comment in support of the Department of Housing and Urban Development’s (“HUD”) proposed rule, Establishing Flexibility for Implementation of Work Requirements and Term Limits (the “Proposed Rule”). The proposed rule would amend C.F.R. Parts 5, 960, 982, and 983 to allow Public Housing Authorities (PHAs) and Project-Based Rental Assistance (PBRA) owners to adopt, at their own discretion, work requirements and term limits for non-elderly and non-disabled recipients of federal housing assistance.

WILL is a nonprofit law and policy center headquartered in Milwaukee, Wisconsin, working to advance federalism, economic liberty, and free markets to promote self-sufficiency. The organization has a longstanding commitment to research and advocacy of policies that encourage workforce participation and decrease reliance on government programs. By encouraging individuals to work as a condition of housing assistance, HUD is helping Americans return to work and achieve economic independence.

II. The Proposed Rule Effectuates the Purpose of the 1937 Housing Act: Flexibility and Self-Sufficiency

As the Proposed Rule highlights, the United States Housing Act of 1937 (“the Act” or “the 1937 Act”) is the vehicle by which the federal government authorizes housing assistance to aid lower-income families in affording housing. Signed into law during the Great Depression, the 1937 Act created the first permanent federal low-income rental housing program.¹ Though the Act has been amended over the years to include additional programs—such as Housing Choice Vouchers (HCV), Project-Based Vouchers (PBV), and Project-Based Rental Assistance (PBRA)—it has consistently emphasized

¹ Maggie McCarty, Cong. Rsch. Serv., R41654, Introduction to Public Housing (Feb. 13, 2014), [available here](#).

that states and localities, rather than the federal government, should play the leading role in advancing the economic well-being of their residents.

Specifically, Section 2 of the 1937 Act declares “[i]t is the policy of the United States... to assist States... to address the shortage of housing affordable to low-income families; and... to vest in public housing agencies that perform well, the **maximum amount of responsibility and flexibility** in program administration”² (emphasis added). Further, Congress declared that “the Federal Government cannot through its direct action alone provide for the housing of every American citizen, or even a majority of its citizens.”³ With that reality in mind, Congress channeled federal funding through state-chartered PHAs, giving states and localities substantial authority to build, own, and operate low-rent public housing.⁴ To be sure, the federal government also provides baseline requirements for PHAs. Among the most important is that “the rental policy developed by each public housing agency **shall encourage and reward employment and economic self-sufficiency**”⁵ (emphasis added).

The Proposed Rule, which would allow—not require—PHAs and PBRA owners to adopt work requirements up to 40 hours per week and term limits of at least two years for non-elderly, non-disabled families, effectuates the stated policy of the 1937 Act. First, granting discretionary authority to states and PHAs to determine the extent to which they may implement work requirements as a condition of housing assistance aligns with the statutory directive that PHAs have the “maximum amount of responsibility and flexibility.” *Supra*. Second, permitting PHAs and PBRA owners to require residents to work up to 40 hours per week as a condition of continued assistance will incentivize employment and economic self-sufficiency.

The goal of the federal housing programs is to address the shortage of housing affordable to low-income families. As such, there ought to be a term limit at which point a resident is expected to be self-sufficient and thereby no longer in need of federal housing assistance—consequently opening housing for the next family in need. Finding work, gaining independence, and transitioning away from government assistance are hallmarks of effective policy.

III. The Rule Advances Federalism by Allowing States Like Wisconsin to Implement Their Own Housing Laws

The Proposed Rule expressly acknowledges that HUD’s current regulatory framework impedes Wisconsin’s laws requiring PHAs to create employability plans and

² 42 U.S.C. § 1437(a)(1).

³ 42 U.S.C. § 1437(a)(2).

⁴ *Supra*, n.1.

⁵ 42 U.S.C. § 1437a(a)(2)(D).

mandate participation in such plans.⁶ In fact, HUD specifically cites Wis. Stat. § 16.314(2), which states in relevant part:

To the extent allowed under federal law, the department shall require that each housing authority do all of the following:

- (a) Conduct screening to determine whether each adult resident in public housing administered by the housing authority is able-bodied and either unemployed or underemployed.
- (b) For each resident the housing authority determines under par. (a) is able-bodied and either unemployed or underemployed, create an employability plan for the resident and require the resident to participate in the plan.⁷

In the Proposed Rule, HUD states that the Department is aware that Wisconsin PHAs have expressed “confusion about how they may implement State requirements while remaining in compliance with federal law,” since PHAs may only implement employability plans to the extent allowed under federal law.⁸ WILL commends HUD for expressing interest in providing clarity for Wisconsin PHAs, and PHAs in similarly situated states.

Because the Wisconsin Legislature conditioned employability plans to what is federally permissible, PHAs are very limited in how they can apply Wis. Stat. § 16.314 to their residents. Currently, the federal law only requires non-exempt residents to participate in 8 hours of community service per month and participate in an “economic self-sufficiency program” for 8 hours per month as a condition of receiving public housing residence.⁹ This is a low threshold that is well below what the Wisconsin Governor and Legislature intended when passing Wis. Stat. § 16.314, *infra*.

A. The Proposed Rule Would Raise the Federal Ceiling Allowing Wisconsin PHAs to Implement Work Hour Requirements

The Proposed Rule would allow PHAs and PBRA owners to specify the number of hours per week an eligible adult must engage in work activities. PHAs and owners could require 15 hours, 20 hours, 30 hours—anywhere up to 40 hours per week.¹⁰ This federal ceiling allows for maximum flexibility. Furthermore, the ceiling would be per eligible individual, not per household.

⁶ Establishing Flexibility for Implementation of Work Requirements and Term Limits, 91 Fed. Reg. 10,016, 10,019–20 (proposed Mar. 2, 2026).

⁷ Wis. Stat. § 16.314(2)(a-b) (emphasis added).

⁸ 91 Fed. Reg. at 10,020.

⁹ 42 U.S.C. § 1437j(c).

¹⁰ 91 Fed. Reg. at 10,022-24, 10,027-29.

This is good for Wisconsin because Wis. Stat. § 16.314 requires the housing authorities to create employability plans, but the content of the plan is left to the discretion of the housing authority to design. Currently, the only federal work-related condition a Wisconsin PHA may incorporate into an employability plan is the 8-hour-per-month community-service-or-self-sufficiency requirement of 42 U.S.C. § 1437j(c)(1), and only for public housing residents. Such a plan hardly has teeth.

Fortunately, the Proposed Rule adds a broad definition of “work activities”—those a PHA may include in its employability plan — that mirrors the definition used in the federal Temporary Assistance for Needy Families (TANF) program.¹¹ The Proposed Rule would allow qualifying work to include unsubsidized employment, subsidized private-sector or public-sector employment, work experience, on-the-job training, job search and job readiness assistance, community service, vocational educational training, education directly related to employment, satisfactory attendance at secondary school or a course leading to a general equivalency credential, and the provision of childcare to an individual participating in community service.¹² Self-employment expressly counts as a work activity.¹³ Critically for states like Wisconsin that require employability plans under state law, PHAs and owners “may adjust what constitutes a work activity based on local needs.”¹⁴ Therefore, a PHA implementing Wisconsin’s statute could incorporate options from the TANF list into an employability plan for a resident.

In sum, the Proposed Rule would allow Wisconsin’s statute to be effectuated to its fullest extent, thereby fulfilling the Wisconsin Legislature’s intent. Not only that, but the Proposed Rule also extends work-requirement and term-limit authority to three programs that Wis. Stat. § 16.314 does not currently reach—Housing Choice Vouchers, Project-Based Vouchers, and Project-Based Rental Assistance. Until now, federal regulations have not authorized work requirement conditions on any programs other than public housing.

B. Wisconsin Has a History of Being at the Forefront of Welfare Reform

Wisconsin has a long and well-documented history of welfare reform, often acting as a national model for transitioning people from public assistance to work. In 1997, The Heritage Foundation declared:

Other reforming states lag a half-decade behind Wisconsin; they are only now engaging in the initial stages of dependency reduction that Wisconsin

¹¹ 91 Fed. Reg. at 10,021 (enumerating categories under the proposed definition, cross-referenced to Social Security Act § 407(d)).

¹² *Id.*

¹³ See proposed 24 C.F.R. §§ 5.4003, 960.102, 982.4, 983.3 (“Self-employment is a work activity.”), 91 Fed. Reg. at 10029-32.

¹⁴ 91 Fed. Reg. at 10,021 n.41.

accomplished in the late 1980s. We might say that the reforms in most states have merely blown the foam off the top of the beer mug, while Wisconsin has already drained the mug halfway to the bottom.¹⁵

For a state closely associated with beer production, the metaphor is spot on—and, at the time, well-earned. In the 1990s, Governor Tommy Thompson implemented work requirements for Aid to Families with Dependent Children (AFDC) recipients¹⁶—the federal program that preceded TANF. Under the reform, a recipient would see his welfare check reduced in direct proportion to the number of hours of community work he failed to perform. Wisconsin’s spending on AFDC benefits decreased by 5 to 10 percent, while AFDC expenditures nearly doubled in other states in the same period.¹⁷

Fast-forward to Governor Scott Walker, and Wisconsin was once again at the cutting edge of welfare reform. For example, in 2015, Wisconsin’s FoodShare recipients—the state’s food stamp program—were required to work at least half time (80 hours per month) or participate in a number of work-training programs as a condition for receiving benefits.¹⁸ It is estimated that implementation of these requirements, helped **over** 25,000 Wisconsinites gain private employment.¹⁹ In fact, as you will see later in this Comment, WILL has conducted a study putting the number closer to 28,000, *infra* .

Then, in 2018, the Governor called the Wisconsin Legislature into a special session to pass a welfare reform package—the *Wisconsin Works for Everyone* plan—which included nine bills that were designed to move people from “government dependence to true independence through the dignity of work.”²⁰ Further, the legislators recognized that “[p]ublic assistance was never intended to be permanent.”²¹ With that lesson in mind, Special Session Assembly Bill 4 was among the bills passed, which enacted Wis. Stat. § 16.314 into law. One other major reform within the package was to allow the state to require recipients of FoodShare to work the maximum amount allowed by federal law—which was 30 hours per week at the time of passage.²²

¹⁵ Robert Rector, “Wisconsin’s Welfare Miracle,” *The Heritage Foundation* (Mar. 3, 1997), [available here](#).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Delong, Katie. March 29, 2015. “Changes Coming to Foodshare Program: Adults without Children will be Required to Work for Benefits.” Fox 6, [available here](#).

¹⁹ Brett Healy, “Wisconsin Leads the Way on Welfare Reform,” *Ripon Forum* (April 2018), [available here](#).

²⁰ *Id.*

²¹ Amy Hasenberg, “Gov. Walker: Calls for Special Session on Welfare Reform,” *WisPolitics*, (Jan. 18, 2018), [available here](#), (quoting Assembly Speaker Robin Vos).

²² Healy, *supra* note 19.

Unfortunately, Wisconsin's current political environment has been less friendly to work requirements, and welfare reform more broadly. Despite these setbacks, WILL has engaged in empirical studies showing that work requirements, do in fact, work.

IV. A WILL Study Shows that Work Requirements Are Successful

In October 2020, WILL published, *Back on Their Feet: The Success of Welfare Reform in Wisconsin and Other Midwestern States*,²³ a statistical analysis authored by Will Flanders, Ph.D., examining what happened after Wisconsin, Indiana, Iowa, and Missouri reinstated work requirements in the federal food-stamp program following the Great Recession. The study analyzed monthly Bureau of Labor Statistics data from 2008 through 2018 across ten Midwestern states — yielding 1,430 state-month observations — and used Wisconsin-style reform adoption as the independent variable, with labor-force participation and unemployment as the dependent variables.²⁴ The findings were unambiguous and statistically significant at the 1% level: SNAP reform was associated with a 0.62% increase in labor-force participation rates and a 0.53% decline in unemployment rates in the four reforming states relative to waiver-retaining states.²⁵ The reforms corresponded to approximately 28,786 additional Wisconsinites, 32,623 Indianans, 29,885 Missourians, and 15,324 Iowans entering the labor force — more than 106,000 working-age adults brought back into productive employment across the four states since the beginning of 2008.²⁶

These findings speak directly to the Proposed Rule's stated objectives. That is—work requirements bring people back to the workforce and incentivize self-sufficiency. Based upon the organization's own empirical research, WILL strongly encourages HUD to finalize the Proposed Rule. Wisconsin has a long history of work requirements benefiting its residents. Therefore, Wisconsin, along with other similarly situated states, should be empowered to direct its PHAs to implement work requirements to the extent allowed under its laws.

V. Conclusion

WILL supports the Proposed Rule and strongly urges HUD to finalize it. The Proposed Rule advances the true purpose of the 1937 Act—to maximize flexibility and encourage self-sufficiency. Further, the rule would *permit* PHAs to implement work requirements—which serves to give states and PHAs options in administering their housing assistance programs. Rather than creating a mandate, the federal government is simply allowing states to innovate their own programs and implement their own statutes. Finally, WILL has conducted the empirical evidence to show that work

²³ Will Flanders, Wis. Inst. for Law & Liberty, *Back on Their Feet: The Success of Welfare Reform in Wisconsin and Other Midwestern States* (Oct. 2020), [available here](#).

²⁴ *Id.* at 4.

²⁵ *Id.* at 6.

²⁶ *Id.* at 1, 7.

requirements serve their purpose by getting people back into the workforce and providing individuals dignity through work.

WILL appreciates the opportunity to submit this comment and is available for further dialogue on these matters.

Respectfully submitted,

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