

## HUD Public Housing Administrative Reform Initiative Supporting Materials for PHAs

**What are these handouts?** They summarize basic statutory requirements without the veneer of embedded practice, regulations, and HUD guidance. They are intended to help the focus groups consider possible streamlining of administrative requirements while keeping the fundamental statutory requirements in mind.

The summaries are not comprehensive, but they do describe the key elements of applicable law for each focus group area. They can help participants focus on statutory requirements that HUD cannot waive without legislation. HUD has the authority to change everything else.

**Maximum PHA flexibility is the goal of administrative reform.** Streamlining administrative requirements is consistent with the stated goals of the U.S. Housing Act of 1937 –

*“the policy of the United States to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public...” (Sec. 2(a)(1)(C))*

**Where do HUD requirements come from?** The public housing program is governed by three levels of Federal requirements: statutes, regulations, and other guidance.

- Statutes are the highest level of authority. They are the source for and supersede regulations and other guidance.
- Regulations impose binding obligations through authority delegated by Congress under 42 U.S.C. 3535(d). In turn, HUD must follow a public notice and comment process for a rule to have the force and effect of law (24 CFR Part 10).
- Other guidance, such as notices and handbooks, explain or interpret law and regulation. They are not legally binding because they have not been through the notice and comment process required for regulations.

**What power does HUD have to waive or change regulations?** Only Congress can alter a statutory requirement. However, HUD can change regulations and guidance. HUD can also waive regulations and guidance in specific cases based on a showing of “good cause”, a determination which is entirely within HUD’s discretion. (24 CFR 5.110) Therefore, regulations or guidance can be addressed by HUD without legislative change.

**Statutory changes require new law.** These summaries are designed to be a starting point for discussions about which program requirements HUD can or cannot address directly. If a requirement is not based in statute, then HUD can change it. If an administrative reform proposal is not consistent with current law, then legislative change is required to implement it.

## Public Housing Administrative Reform Initiative Occupancy Focus Group

### Lease and Grievance Policies

**Statutory and Regulatory Backdrop**—Section 6(k) of the 1937 Act establishes grievance requirements and Section 6(1) outlines minimum standards for leases, which were recently updated by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (P.L. 109-162). Regulations concerning lease and grievance procedures are at 24 CFR Part 966. Unless otherwise noted, the following discussion summarizes the applicable statute, and not the regulations or other guidance.

**Statutory Grievance Policy Requirements:** Under the 1937 Act, PHA policies must:

- Advise residents of the specific grounds of any proposed PHA action against them (such as an eviction)
- Give residents an opportunity for a hearing before an impartial party
- Provide residents the ability to examine any documents, records, or regulations related to the proposed action
- Entitle residents to be represented by another person of their choice at any hearing
- Enable residents to present statements on their behalf by other persons and to ask questions of any witnesses
- Permit residents to review written decisions by PHAs on any action

**Special Grievances That Might Not Be Covered by Standard Grievance Policy—**

Certain types of grievances can fall outside of a PHA's standard grievance policy:

If a grievance:

- Threatens the health or safety of other residents or PHA employees
- Threatens other resident's right to peaceful enjoyment of the premises
- Involves violent or drug-related activity on or off the premises
- Involves activity that results in a felony conviction

Then, a PHA may:

- Establish an expedited grievance procedure
- Exclude from its grievance policies grievances that, prior to eviction, would otherwise be given a hearing in a court of the local jurisdiction

**Statutory Lease Requirements from the 1937 Act and Regulations**—Public housing leases must meet the following minimum standards:

- Have a term of 12 months and must automatically renew, unless the resident does not meet community service requirements
- May not contain unreasonable terms and conditions
- Obligate the PHA to provide decent, safe and sanitary housing
- Require the PHA to provide adequate notice of the termination of the lease:
  - Not to exceed 30 days if the health or safety of other residents or PHA employees is threatened or in the event of drug-related or criminal activity
  - 14 days in the case of non-payment of rent
  - 30 days in all other cases, unless State or local law provides for a shorter time period
- May only be terminated for serious and repeated violations of the lease or other good cause

- Provide that criminal activity that threatens the health, safety or peaceful enjoyment of the premises of other residents, or drug-related activity on or off the premises by the resident, or a member or guest of resident's household constitutes grounds for termination of the lease
- Specify that with respect to any notice of eviction or termination and prior to any hearing or trial, residents shall be informed of the opportunity to examine any relevant documents, records or regulations related to the eviction or termination
- Provide that the illegal use of drugs or the furnishing of false or misleading information regarding the illegal use of drugs is grounds for termination
- Provide that fleeing from prosecution, violating a condition of probation, or violating a condition of parole is grounds for immediate termination

**VAWA Added New Lease Requirements**—The Violence Against Women Act and Department of Justice Reauthorization Act of 2005 ("VAWA") added additional lease requirements designed to give protection to victims of domestic violence. Under VAWA, leases must also provide that:

- Incidents of threatened or actual domestic violence, dating violence or stalking may not constitute grounds of termination for the victim of such violence
- Criminal activity directly related to domestic violence, dating violence or stalking by a member or guest of resident's household shall not be grounds for termination of tenancy against the victim of such violence
- PHAs may bifurcate leases in order to evict, remove, or terminate assistance to any individual who engaged in criminal acts of physical violence against family members without evicting the victims of such acts
- PHAs may honor court orders addressing rights of access or control of the property, including civil protection orders, among family members
- PHAs may evict residents for any violation of leases not premised on domestic violence, so long as the PHA does not subject victims of domestic violence to more demanding standards in eviction proceedings
- PHAs may still evict residents if the PHA can demonstrate that a tenancy is an actual and imminent threat to other residents or employees
- State or local law which provides greater protections to victims of domestic violence will control

Additionally, PHAs may require individuals seeking protection under the above provisions to certify their status as a victim of domestic violence, dating violence or stalking. This certification may be on an approved HUD form (currently HUD-50066), in a court record, or in a signed statement from a professional who has rendered assistance to the victim in connection with the incidents of domestic violence.

## **Admissions and Eligibility Requirements**

**Statutory and Regulatory Backdrop**—Statutory requirements for admissions and eligibility for public housing are spread throughout the 1937 Act. Relevant sections include Section 3(b), which includes definitions for terms used throughout the code (42 USC 1437a(b)), Sections 6(c)(4)(A) and 6(r), addressing the admissions preferences and waiting lists (42 USC 1437d), Section 7, addressing designated housing (42 USC 1437e) and Section 16, addressing income targeting and deconcentration of poverty (42 USC 1437n). In addition, civil rights and fair housing laws govern admissions and eligibility. Applicable regulations can be found at 24 CFR Parts 5 (general definitions), 945 (designated housing), 960 (admissions), and 966 (rents and leases). Fair housing and civil rights regulations may also be found at 24 CFR Parts 100-180. Unless otherwise noted, the following discussion summarizes the applicable statute, and not the regulations or other guidance.

**Civil Rights and Fair Housing Implications**—The Fair Housing Act governs admissions to public housing units and a myriad of other civil rights laws and executive orders. The purpose of these laws is to ensure that no citizen is unjustly denied access to federal programs or benefits. Essentially, as applied to PHAs, these laws prohibit discrimination against applicants or tenants of public housing on the basis of protected classes including race, color, national origin, family status, disability, age, religion, or gender. In the case of disability, PHAs are also required to make reasonable accommodations for applicants or tenants with disabilities. The specific requirements of these non-discrimination laws, and the definition of discrimination, are largely defined by federal, state and local courts in case law. State and local governments may also have additional non-discrimination laws. Since the requirements of the fair housing and civil rights laws often emanate from other branches of the government, there may be little HUD can do to reform non-discrimination requirements.

**Basic Eligibility**—Section 3(a). All public housing units must be rented to low-income families. Low-income families are defined as those earning below 80% of median income. HUD determines median incomes for geographic areas.

*Exceptions:*

- PHAs may rent to over-income police officers if the purpose is to increase security for residents (Section 3(a)(4))
- Small PHAs (under 250 units) may rent on a month-to-month basis, to over income families if there are no eligible families on the waiting list (Section 3(a)(5))

**Income Targeting**—Section 16(a). At least 40% of a PHA's public housing units must be rented to families earning below 30% of median income. This requirement can in some circumstances be offset by the number of families receiving Section 8 tenant based assistance.

**Alternate Standards**—Section 16(d). PHAs may establish and implement alternate admission standards if good cause can be established. Any alternate standards must be included within the Annual Plan.

**Deconcentration**—Section 16(a)(3). PHAs cannot concentrate very-low income families (families earning below 50% of median) in particular public housing projects or buildings. PHA Annual Plans must include a deconcentration of poverty policy. PHAs may offer incentives to families in order to achieve deconcentration policies, however, families must retain the ultimate choice of whether to accept the incentive. PHAs may also skip families on the waiting list in order to achieve its deconcentration policy.

**Substance Abuse and Criminal Activity**—Sections 6(l), 6(s), and 6(t). Admissions decisions may be based on the criminal history or drug-use of potential and existing residents such that:

- Persons convicted of manufacturing methamphetamines on public housing premises are prohibited from receiving public housing assistance (Section 16(f))
- Illegal drug use, or legal drug use that threatens the health, safety or peaceful enjoyment of other residents may be the basis for denying admission (Section 6(l)(7) and Section 576 and 577 of QHWRA)
- Persons evicted from public housing on grounds of drug related activity are prohibited from receiving public housing assistance for a period of 3 years (Section 576 of QHWRA)
- Persons involved in violent or drug-related criminal activity may be denied admission (Section 576 of QHWRA)

To verify or ascertain whether an applicant may be denied admission on the above grounds a PHA may:

- Require applicants to furnish criminal records (Section 6(s))
- Require applicants to give consent to the PHA to obtain records from a drug-abuse treatment facility and may consider completion of rehabilitation programs (Section 6(t) and Section 576 and 577 of QHWRA)

*However:*

- Drug-abuse treatment facility records may not be used or requested discriminatorily, a PHA must either request such consent from all applicants, or have some reasonable basis for requesting consent such as a record of prior drug use

**Site-Based Waiting Lists**—Section 6(r). PHAs may maintain site based waiting lists, but such lists must comply with applicable civil rights laws, and PHAs must inform all applicants of all available waiting list options.

**Admissions Preferences**—Section 6(c)(4)(a). PHAs may establish admission preferences for public housing based on local needs and priorities. Such preferences must be determined by the PHA based on generally accepted sources of data. Preferences must be described in the annual plan.

**Designated Housing**—Section 7. Upon approval of HUD, PHAs may designate some public housing as elderly-only, disabled-only, or elderly and disabled-only. Designated housing will be approved by HUD after submission of a designated housing plan, which establishes the need for the designation. Housing designations will apply for 5 years, and may receive renewal terms of two years.

## Rent Calculations

**Statutory and Regulatory Backdrop**—Section 3(a) of the 1937 Act governs rent calculations for public housing units. Regulations on rent are at 24 Part 960, Subpart B. Unless otherwise noted, the following discussion summarizes the applicable statute, and not the regulations or other guidance.

**Election of Rent Payment Method**—Annually, PHAs must annually offer residents a choice to pay rent based on their income, or based on a flat rent established by the PHA. The PHA must also allow families paying rent under the flat rent method to switch to the income-based method if the family faces a financial hardship.

**Income Based Rents**—Families that elect to pay rent on an income based method pay the highest of the following amounts:

- 30% of the family's monthly adjusted income
- 10% of monthly income
- If the family is receiving welfare assistance from a public agency, and a portion of the payment is designated for housing costs, then rent will equal the designated housing portion

PHAs must conduct annual income reviews for families paying rent on an income basis.

**Adjusted Income**—Adjusted income includes all income received by all household members minus the following mandatory exclusions:

- \$400 for elderly or disabled families
- Unreimbursed medical expenses that exceed 3% of annual income
- Child Care Expenses
- \$480 for each member of the family who is a minor, student or disabled (no deduction for the head of household or spouse)
- Child support payments up to \$480 (to children not residing in the household)
- Spousal support payments up to the lesser of \$550 or the amount required under a legal obligation to a former spouse not residing in the household
- Earned income of minors (unless minor is the head of household or spouse)

In addition, PHAs may deduct the following permissive exclusions to arrive at adjusted income:

- Employment or education related travel expenses not exceeding \$25 per week
- Earned income of the family, pursuant to a policy established by the PHA
- Any other exclusions established by the PHA. (Section 3(b)(5))

**Restrictions on Rent Increases from Earned Income**—Rent due under an income-based method may not be increased as a result of increased income from employment for the first 12 months after the employment begins. During the second 12 months of continued employment, the PHA may increase the income based rent by 50% of the total increase in rent that would otherwise result from the increased income.

To exclude earned income from the rent determination a family's increased income must result from employment that follows a year or more of unemployment or receipt of temporary assistance under a state program. (Section 3(d), 42 USC 1437a(d))

**Flat Rents**—PHAs must establish for each public housing unit a flat rent amount based on the following factors:

- Must be based on the rental value of the unit, as determined by the PHA

- Must not create a disincentive for continued residency in public housing by families who are attempting to become self-sufficient through employment or other means

PHAs must conduct income reviews for families paying flat rents at least once every three years.

**Minimum Rents**—Regardless of the election of rent structure, or the income of the family, any family residing in a public housing unit must pay a minimum rent of not more than \$50 per month. Minimum rents must be determined by the PHA.

*Hardship Exception*—PHAs must grant exemptions from minimum rent requirements to families who demonstrate financial hardships. Hardships include:

- Loss of eligibility in Federal, State or local assistance program
- Eviction would result from imposition of minimum rents
- Income has decreased due to change circumstance such as loss of employment
- Death in the family
- Other situations as determined by the PHA

*Waiting Period*—If the PHA reasonably determines that the hardship is temporary, the PHA may wait to grant the exemption for a period of 90 days. However, the PHA cannot evict the resident for non-payment of rent during the waiting period. If the resident demonstrates the long-term hardship exists, then the exemption will be applied retroactively.

***NOTE: The above information may be significantly amended by the Section Eight Voucher Reform Act, H.R. 1851 (“SEVRA”), which is currently being debated in the House of Representatives.***

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## **Public Housing Administrative Reform Initiative Capital Fund and Agency Plans Focus Group**

### **Capital Fund**

**Statutory and Regulatory Backdrop**– Section 9(d) of the 1937 Act creates a Capital Fund and establishes criteria to allocate and use the funds. Unless otherwise noted, the following discussion summarizes the applicable statute, and not the regulations or other guidance.

**The Statute Details Eligible Uses**- Under Section 9(d)(1), PHA's use Capital Funds for:

- development, financing, and modernization of public housing projects;
- vacancy reduction;
- addressing deferred maintenance;
- code compliance;
- management improvements;
- demolition and replacement;
- resident relocation;
- capital expenditures to support resident self-sufficiency and participation;
- capital expenditures for security and safety; and
- homeownership programs, including those under Section 32.

Instead of issuing new regulations to implement the above, HUD has relied on those already in place for the former public housing modernization program at 24 CFR Part 968, and the public housing development program at 24 CFR Part 941. The PHA Plan regulations at 24 CFR Part 905 also apply to planning for CFP.

#### **CFP is Distributed with a Formula Developed through Negotiated Rulemaking-**

Congress charged HUD with developing a formula to distribute Capital Funds to PHAs (Section 9(d)(2)), but also required HUD use negotiated rulemaking procedures to do so. (Section 9(f)). The resulting CFP formula regulations are at 24 CFR Part 905.

#### **CFP Long-Term Use Restrictions Differ Depending on How PHAs Use the Funds-**

Units developed with CFP funds must be used for public housing for 40 years. Units modernized with CFP funds must be used for public housing for 20 years. (Section 9(d)3)).

**CFP Money is Fungible with Operating Funds**- A PHA with 250 or more units may use up to 20% of its CFP funds for Operating Fund activities and a PHA with less than 250 units (if it is not troubled and is adequately maintaining its units) may use up to 20% of its CFP funds for Operating Fund activities. (Sections 9(g)(1) and (2)).

**There Are Limits on the Number of Units in a PHA's Inventory**- Section 9(g)(3) of the 1937 Act limits the number of public housing units a PHA may operate to the number of units it had on October 1, 1999. There are several exceptions, including where the PHA agrees that the units will not be eligible for additional operating or capital funds and for mixed-finance projects where the estimated cost over the useful life of the project would be less than resident-based vouchers.

**PHA Must Follow an Obligation Timeline**- CFP funds must be obligated within 2 years and expended within 4 years of the time such funds "become available" to the PHA. Section 9(j). HUD's remedies for violation of these provisions include withholding future funds and recapturing existing funds. However, the statute provides for various exceptions to these requirements. Regulations implementing Section 9(j) are at 24 CFR Part 905.

## PHA Plans

**Statutory and Regulatory Backdrop**—Section 5A of the 1937 Act, requires each PHA to submit to HUD a 5-Year Plan and an Annual Plan.

**PHA's Must Have a 5-Year Plan** - The 5-Year Plan must include a mission statement for serving low-income and very low-income families and a statement of the goals and objectives of the PHA. They must also now address certain VAWA requirements. (See below.) (Section 5A(a)) Regulations for the PHA Plan are at 24 CFR Part 903.

**Annual Plan Process**—A PHA must submit an Annual Plan for each PHA fiscal year in which it receives vouchers, operating funds, or capital funds from HUD. For each year after the initial Plan is submitted, the PHA may comply by updating the Plan from the previous year. Requirements and procedures for submission and review of plans are to be established by HUD. An Annual Plan must be developed in consultation with the Resident Advisory Board (“RAB”) and must be consistent with the consolidated plan for the PHA’s jurisdiction. (Section 5A(b) and (c))

*Public Hearings Required*—A PHA must hold a public hearing on the Plan and make the Plan available 45 days in advance of the hearing. The PHA may adopt the Plan after considering public comments received at the hearing and making appropriate changes in consultation with the RAB. A RAB may appeal directly to HUD if it believes the PHA has failed to provide adequate notice and opportunity for comment. (Section 5A(f))

*Amendments or Modifications*—A PHA may amend its Plan after submitting it. However, a “significant amendment or modification” is subject to a public hearing and consultation with the RAB and must be adopted by the PHA at a public meeting and approved by HUD. (Section 5A(g))

*Submission to HUD*—The Annual Plan must be submitted to HUD at least 75 days before the start of the PHA’s fiscal year. (Section 5A(h)) HUD is to review the Plan (or a significant amendment or modification) to determine if the contents (A) set forth the required information, (B) are consistent with information and data available to HUD, and (C) are not prohibited by or inconsistent with law. HUD may disapprove a Plan “only if” it determines that the Plan does not comply with these 3 requirements. (Section 5A(h) and (i))

*HUD Review*—HUD must review sections pertaining to deconcentration policies, demolition and disposition and civil rights certifications, but may review all other elements only if challenged. (Section 5A(i)(2))

*HUD Approval*—HUD must provide written notice to the PHA within 75 days of submission if it objects to the Plan and must provide specific reasons of disapproval. If no notice is provide, the Plan will be deemed approved. The approved Plan shall remain available to the general public. (Sections 5A(i)(3), (4) and (5))

**Annual Plan Contents**—Annual Plans must contain information on the following:

- Housing needs for low-income and very low-income families in the jurisdiction and on the PHA's waiting list
- Available financial resources
- Eligibility, selection, and admissions policies (including deconcentration policies)
- Rent policies
- Operation and management standards and policies
- Grievance procedures; a capital improvement plan
- Demolition and disposition plans
- Designated housing
- Required and voluntary conversion plans
- Homeownership programs under Sections 8(y) or 32
- Community service and self-sufficiency programs
- Plans for safety and crime prevention
- Pet policies
- Civil rights certification
- Annual audit results
- Asset management strategy
- "Any other information required by law to be included in a public housing agency plan". (Section 5A(d))

**PHAs Must Involve Resident Advisory Boards in the Annual Plan Process**—A PHA must consider the recommendations of the Resident Advisory Board ("RAB") and include them in the final plan with a description of how they were addressed. HUD may waive the requirement for a RAB if the PHA demonstrates that other resident organizations adequately represent residents' interests and can perform the functions of a RAB. (Section 5A(e))

**Troubled Agencies May Have Additional Hoops to Finalize an Annual Plan**—For troubled or at-risk PHAs, HUD may require additional information and must provide explicit approval or disapproval of the Plan. (Section 5A(j))

**High-Performing Agencies and Small PHAs Are Eligible for Streamlined Plans**—HUD may establish a "streamlined" Plan for high-performing PHAs, small PHAs (less than 250 public housing units), and PHAs that only administer vouchers. (Section 5A(k))

**HUD is Charged With Enforcement of Annual Plan Requirements**—HUD shall respond to any complaint that a PHA is not complying with its Plan and ensure such compliance. (Section 5A(l))

**VAWA Changed PHA Plan Requirements**—The Violence Against Women Act and Department of Justice Reauthorization Act of 2005 ("VAWA") says that PHAs must change their five-year Plans to state the goals, objectives, policies, or programs it has, or is starting, to serve domestic violence, dating violence or stalking victims. Annual Plans must furnish descriptions of each activity, service or program that assists victims of domestic violence to obtain or maintain housing or that is intended to prevent violence or enhance safety from such violence in assisted families.

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## **Public Housing Administrative Reform Initiative Resident Involvement/Self-Sufficiency Focus Group**

### **Statutory and Regulatory Backdrop –**

- Applicable law on tenant participation requirements is in Section 2(b), 5A(e), and 6(c)(4)(C) of the 1937 Act. The regulations for tenant participation are at 24 CFR Part 964.
- Applicable law on community service requirements is in Section 12 of the 1937 Act. The regulations are at 24 CFR Part 960.
- Applicable law on RMCs is in Section 20 of the 1937 Act. The regulations for RMCs are also at 24 CFR Part 964.
- The regulations for resident-owned business are at 24 CFR Part 963.
- Applicable law on Section 3 can be found in Section 3 of the Housing and Urban Development Act of 1968. The regulations for Section 3 are at 24 CFR Part 135.
- Applicable law on FSS can be found in Section 23 of the 1937 Act. The regulations on FSS are at 24 CFR Part 984.

Unless otherwise noted, the following discussion summarizes the applicable statute, and not the regulations or other guidance.

### **Tenant Participation –**

- At least one resident, or person directly assisted by the PHA must sit on PHA boards of directors. Exceptions to this rule are made for:
  - States that require board members to be full-time and salaried or
  - PHAs with fewer than 300 public housing units where no resident has indicated intent to participate on the board after sufficient notice by the PHA. (Section 2(b))
- PHAs must to establish at least one resident advisory board that represents the residents, and which will make recommendations on PHA's agency plan. This requirement may be waived if there are other resident organizations that adequately represent residents. (Section 5A(e))
- Requires the establishment of effective tenant-management relationships to assure that standards of resident security and project maintenance are established and enforced. (Section 6(c)(4)(C))

### **Community Service Requirements**

- All adult residents of a public housing project are required to either perform community service or participate in an economic self-sufficiency program for 8 hours per month unless the resident qualifies for an exemption due to age, disability, other work requirements, etc. (Section 12(c))
- H.R. 458, which was introduced in January, would repeal this requirement.

**RMCs** – RMCs are companies owned and managed by public housing residents. If residents form an RMC, then the PHA must work with the RMC to manage the public housing property. PHAs must provide management contracts to RMCs with terms similar to those available to private management companies. (Section 20)

**Resident-owned Business** – There are no specific statutory mandates for resident-owned businesses.

### Section 3 –

- Employment and other economic opportunities generated by Federal financial assistance for housing and community development must, to the greatest extent feasible, be directed toward low- and very low-income persons.
- In fulfilling Section 3 goals, PHAs must direct benefits and opportunities according to the below priorities when hiring or awarding contracts:
  - Residents of the property subject to the employment or development contract
  - Residents of other public housing properties
  - Youthbuild participants
  - Low and very-low income residents of the metropolitan area

### FSS –

- PHAs that administer section 8 programs are required to carry out a local Family Self-Sufficiency (FSS) program that includes an action plan and provides comprehensive supportive services for families electing to participate in the program unless they demonstrate that it is not feasible due to local circumstances. (Section 23(b))
- PHAs administering an FSS program shall make a contract with each participant, requiring the head of the family to seek employment and setting out: provisions of the local program, goals, performance measures, and available resources. (Section 23(c))
- Incentives for participation received by the family include: limitations on rent increases, the creation of escrow savings accounts, and other incentives developed by the PHA as specified in its local plan. The following provisions apply to families using escrow accounts in each income group:
  - *Less than 50 percent of the area median income* – the PHA escrows the difference between 30 percent of the family's adjusted income and the amount paid by the family for rent
  - *Between 50 and 80 percent of the area median income* - the Secretary escrows the difference between 30 percent of the family's income and the amount paid by the family for rent
  - *Greater than 80 percent of the area median income* - the Secretary will not escrow any amount. (Section 23(d)(2))
- Increase in income by a participating family shall be not be considered as income when determining eligibility for benefits unless the family's income is at least 80 percent of the area median income. (Section 23(e))
- The PHA must establish a program coordinating committee. (Section 23(f)).
- The PHA must develop a FSS Action Plan that includes a description of: the population the PHA expects to serve, service to be provided, incentives for participation, public and private resources, and an implementation timetable. These descriptions and the required assurances must be approved by HUD. (Section 23(g))
- PHAs have to submit annual reports about the FSS program, which must include a description of the activities carried out and the effectiveness of the program as well as any recommendations for improvements. (Section 23(l))
- The Secretary shall provide for inclusion under the performance funding system under section 9 of reasonable and eligible administrative costs (including the costs of employing a full-time service coordinator) incurred by PHAs carrying out local FSS programs under this section. (Section 23(h)(2))
  - ***NOTE: Funding for service coordinators has been inconsistent but to make FSS programs work a coordinator is needed. The SEVRA bill currently under debate in the House of Representatives would***

***distribute coordinator funding according to a formula, largely based on the number of participating families, rather than relying on annual allocations.***

**ROSS –**

- QHWRA added this section in 1998. ROSS represents a recombination and restructuring of previous HUD programs after QHWRA including: The Tenant Opportunities Program (TOP), Economic Development and Supportive Services Program (EDSS), and Public Housing Service Coordinators.
- Funds are available for activities at or near the public housing project or PHA property that are designed to promote self-sufficiency of public housing residents or provide supportive services for residents. (Section 34(a)).
- Eligible activities include:
  - Physical improvements to a public housing project in order to provide space for supportive services
  - The provision of service coordinators or a congregate housing services program for elderly or disabled individuals
  - The provision of services related to work readiness
  - Economic and job development
  - Resident management and participation activities and
  - Other activities designed to improve the economic self-sufficiency of residents. (Section 34(b)).

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## **Public Housing Administrative Reform Initiative General Monitoring Focus Group**

**Statutory and Regulatory Backdrop** –Section 6(j)(1) of the 1937 Act creates the Public Housing Assessment System (“PHAS”) and instructs HUD to set management indicators through notice and comment rulemaking. At a minimum, Congress said, indicators must include the following:

- vacancies (and progress in last 3 years)
- unobligated Capital Funds
- utility consumption
- vacant unit turn-around
- maintenance work orders outstanding (and progress in last 3 years)
- percentage of units a PHA fails to inspect
- the extent to which a PHA promotes resident self-sufficiency provides opportunities for resident involvement
- the extent to which a PHA implements effective screening, eviction and anti-crime policies and coordinates with local government and residents on such policies
- the extent to which a PHA is providing “acceptable basic housing conditions”
- any other factors HUD deems appropriate

The regulations implementing PHAS are found at 24 CFR Part 902. Unless otherwise noted the following materials summarize the applicable statutes and not regulations or other guidelines.

**Troubled PHAs** - Sections 6(j)(2) and (3) of the 1937 Act contain extensive provisions dealing with troubled PHAs.

**SEMAP Is Not Required by Statute.** – SEMAP is similar to PHAS, but deals with management indicators for the Section 8 Program. The SEMAP regulations are at 24 CFR Part 983. HUD’s created SEMAP under its general authority to “make such rules and regulations as may be necessary to carry out his functions, powers, and duties.” (42 U.S.C. 3535(d))

**Part 85 Impose Standards for Procurement, Financial Management, Record Retention and Other Administrative Issues** – Although not required by statute, HUD has “Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments,” which are at 24 CFR Part 85. Part 85 substantially similar to regulations implemented by virtually all federal agencies. It applies to all “grants and subgrants” (for example, public housing operating and capital funds) and contains detailed requirements covering a broad range of PHA activities. Among the most important topics are:

- Standards for financial management systems (Section 85.20)
- Allowable costs for grants and subgrants (Section 85.22)
- Definition and eligible uses of “program income”
- Procurement rules (Section 85.36)
- Financial reporting requirements
- Retention and access requirements for records

**PHAs Must Have Annual Independent Audits** – Section 5(h) of the 1937 Act provides that HUD, the HUD Inspector General and the U.S. Comptroller General shall, for purposes of audit and examination, have access to any books, documents, papers, and records of a PHA that are pertinent to the 1937 Act and a PHA's operations using funds provided under the Act. HUD may, in its sole discretion, arrange for and pay the costs of an audit, and may withhold from assistance otherwise payable to the PHA the costs of conducting an acceptable audit.

Under Part 85, a PHA is responsible for obtaining an audit in accordance with the Single Audit Act and OMB Circular A-133. The audit must be performed by an independent auditor in accordance with generally accepted accounting principles. (24 CFR Sec. 85.26)

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## **Public Housing Administrative Reform Development and Asset Repositioning Focus Group**

### **Demolition, Disposition and Conversion**

**Applicable Law** – Section 18 of the 1937 Act governs the demolition and disposition of public housing projects. The regulations governing demolition and disposition activity are at 24 CFR Part 970. The terms “demolition” and “disposition” are not defined in the statute, but are defined in the regulations at 24 CFR 970.3. Conversion is addressed in Section 22 and Section 33 of the Act. Unless otherwise noted, the below discusses the statutes and not the regulations or other guidance.

#### **HUD Approval:**

**Demolition** - The statute requires HUD to approve a demolition application if the PHA certifies with respect to a project (or portion of it) that:

- it is “obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and
- it is not cost effective to modernize it.

**Disposition** - The statute requires HUD to approve a disposition application for a project or other property subject to the Act if:

- retaining it is not in the best interests of the residents or the PHA due to neighborhood conditions or because it will allow development of replacement low-income housing; or
- the PHA otherwise determines the disposition to be appropriate under certain circumstances.

**Disapproval** – HUD must disapprove an application if it determines that:

- a PHA certification is inconsistent with other information or data HUD has; or
- the application was not developed in consultation with affected residents, the Resident Advisory Board, and appropriate government officials. (Sec. 18(b))

**PHA Plan** – The demolition or disposition must be included in and consistent with the applicable PHA Plan. (Sec. 18(a)(4))

**Relocation** – The Act contains extensive provisions on notice to and relocation of residents from projects to be demolished or disposed of. In particular, residents must be relocated to “comparable housing”. Also, the Uniform Relocation Act does not apply to activities covered by Section 18. (Section 18(g))

**Resident Opportunity to Purchase** – Before disposing of a public housing project, a PHA must offer the property to any eligible resident organization, resident management corporation, or nonprofit organization acting on behalf of the resident that expresses an interest. There are additional requirements regarding notice and the timing of the opportunity to purchase. (Sec. 18(c))

**De Minimis Exception** – Under certain circumstances, a PHA may demolish not more than the lesser of 5 units or 5% of its units in any 5-year period without being subject to Section 18. (Sec. 18(f))

**Voluntary Conversion** (Section 22):

- PHAs may convert a public housing project to tenant-based vouchers under certain circumstances:
  - Most significantly, the PHA must show that converting to vouchers would be more cost-effective than rehabilitation of the project over the term of its useful life.
- The PHA must provide a conversion plan that is developed in consultation with residents, is part of the PHA Plan, describes the future use of the property and includes an impact analysis.
- The statute contains extensive resident notice and relocation provisions.
- HUD may disapprove a conversion plan only under limited circumstances.

**Required Conversion** (Section 33):

- PHAs must convert public housing projects to tenant-based vouchers under certain circumstances:
  - Distressed public housing projects where the cost of rehabilitation and continued operation exceeds the cost of conversion to tenant-based vouchers
  - Must identify projects in consultation with residents and local government officials
- The PHA must then develop and carry out a 5-year plan for such a conversion.
- HUD may intervene and designate a project for conversion if a PHA fails to do so.
- The statute contains extensive resident notice and relocation provisions.
- Section 18 (governing demolitions and dispositions) does not apply to required conversions.

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## **Public Housing Administrative Reform Initiative Homeownership Focus Group**

**Statutory and Regulatory Backdrop** – Sections 8, 9, 24, and 32 of the 1937 Act deal with homeownership. There are regulations for the Section 32 program at 24 CFR Part 906. Unless otherwise noted, the below summarizes Section 32 and not the regulations, other guidance, or other programs. Unless otherwise noted, the following discussion summarizes the applicable statute, and not the regulations or other guidance

**Units that May Be Sold to Residents** – PHAs may sell existing public housing units or other units owned, assisted, operated, or otherwise acquired by the PHA. Section 32(b). Only low-income families and entities that purchase units for resale to low-income families can buy units. PHAs may establish additional limitations or requirements for participants. Section 32(c). The PHA may sell any kind of ownership interest, including: fee simple, a condominium interest, an interest in a limited dividend cooperative, and other types of interests. Section 32(h). Restrictions on the disposition of public housing units do not apply under approved homeownership programs. Section 32(l).

**Sales Programs Must Have Right of First Refusal & Protections for Non-purchasing Residents** –The PHA must first offer any resident(s) occupying the unit a chance to purchase the unit before it is sold. Section 32(d). And, protect non-purchasing residents (Section 32(e)) by:

1. Notifying the resident 90 days prior to displacement;
2. Offering displaced residents comparable housing;
3. Paying for relocation expenses;
4. Providing the displaced resident with any necessary counseling; and
5. Waiting to transfer the unit until the resident is relocated.

**Downpayment, Financing and Assistance** – PHAs must require a downpayment but may determine the amount. At least 1% of the purchase price must be paid by the family buying the unit from their own resources. Otherwise, the family may use grants, gifts, etc. to make the downpayment. Section 32(g). The homeownership program may provide for financing assistance in any manner considered appropriate by the PHA. Section 32(f).

**Resale limitations** –Homeownership programs must limit the resale to eligible families and will provide for other limitations that the PHA feels are appropriate to recapture some of the economic gain derived from the resale (see 32(i) for additional details). Section 32(i).

**Use of Capital Fund and Proceeds from Sale** –Any proceeds should be used for purposes related to low-income housing consistent with the PHA's agency plan. Section 32(j). The PHA may use money that it received under the Capital Fund or other earned income to provide public housing residents with assistance in purchasing a principal residence, which need not be located in a public housing project. Section 32(k).

**Other sections of the 1937 Act relevant to homeownership:**

- Section 8(y). Sets out the rules under which a PHA may provide resident based assistance to an eligible family to allow them to purchase a home.
- Section 24(d). Mentions that grants for revitalization of severely distressed public housing projects under this section may, among other things, be used for homeownership downpayment assistance for displaced residents or other appropriate replacement homeownership activities.

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## **Public Housing Administrative Reform Initiative General Management Focus Group**

**Statutory and Regulatory Backdrop**—Statutory provisions for the general management of public housing, outside of occupancy issues, is scattered throughout the codes. Relevant provisions can be found in the 1937 Act at Section 12 regarding required wage rates, Section 6 regarding maintenance standards, and Section 9 regarding use restrictions. The majority of requirements for management of public housing, other than occupancy issues, is found in non-statutory sources such as the regulations at 24 CFR Parts 5 (procurement and contracting), 965 (wage, rates, utilities and insurance) and 969 (use restrictions), executive orders and the ACC. Unless otherwise noted, the summaries below discuss the applicable statute and not the regulations or other guidance.

**Use Restrictions** - Section 9(d). Units developed with public housing funds must be used for public housing for 40 years. Units modernized with public housing funds must be used for public housing for 20 years.

### **Wage Rates:**

*Prevailing Wages* – Section 12 of the 1937 Act requires PHAs to pay HUD-determined prevailing wages to all architects, technical engineers, draftsmen, and technicians involved in the development of public housing, and to all maintenance laborers and mechanics employed in the operating of public housing.

*Davis-Bacon* – Section 12 also requires PHAs to pay Davis-Bacon wages rates (as determined by the Department of Labor) to all laborers and mechanics employed in the development of a public housing project (and also a Section 8 project under certain circumstances).

*Certification* – HUD shall require certification from a PHA of compliance with these provisions before making any payments to the PHA.

**Procurement** - At the Federal level, PHA procurement requirements are not statutory, but are generally governed by the agency-wide regulation at 24 CFR Part 85 (which is known as the “Common Rule”). PHAs are subject to the procurement rules of Section 85.36 as local governments when using Federal grant funds. PHAs are also subject to applicable State and local laws and regulations, provided that they conform to Federal law and the standards of Section 85.36.

**MBE/WBE Requirements**-- Minority Business Enterprise and Women’s Business Enterprise (MBE/WBE) requirements originate from Executive Orders. (See, e.g. EOs 11625, 12138 and 13170). They are designed to support and assist MBE/WBEs and to provide for increased access for disadvantaged businesses to Federal contracting opportunities. Executive Order 13170 requires all agencies within the executive branch to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and MBE/WBEs.

**Insurance** – Insurance requirements for public housing projects are not statutory, but are included in the Annual Contributions Contract and in Part 965.

**Maintenance and Inspections** – Section 6(f) of the 1937 Act requires a PHA to maintain its public housing in a condition which meets or exceeds the Housing Quality Standards (HQS) established by HUD by regulation. A PHA must “make an annual inspection of each public housing project to determine whether units in the project are maintained in accordance with HQS.

**Utilities** – Utility allowances and policies are located in the in the regulations at Part 965. There are no specific statutory mandates for the treatment of utility costs.

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## **Public Housing Administrative Reform Financial Management Focus Group**

**Statutory and Regulatory Backdrop** — This focus group will discuss the Operating Fund, project-based budgeting, project-based funding, and project-based accounting, as well as related issues such as permitted investments, and the “FDS.” Unless otherwise noted, the following discussion summarizes the applicable statutes, and not the regulations or other guidance

**Statutory Requirements** – Only one element of this focus group discussion is governed by statute. The Operating Fund is established by 9(e) of the 1937 Act which directs HUD to establish an operating fund and develop a formula to distribute it through a “negotiated rulemaking” procedure. The implementing regulation is found at 24 CFR Part 990.

**Operating Fund Formula** – Section 9(e)(2) of the Act directs HUD to consider a number of factors in developing a formula, including:

- ❖ standards for the costs of operating and reasonable projections of income, taking into account
  - the characteristics and locations of the public housing projects and characteristics of the families served and to be served (including the incomes of the families), or
  - the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed public housing project;
- ❖ number of public housing units (“PHU”) owned, assisted, or operated by the PHA; and
- ❖ number of chronically vacant PHU, programs for economic self-sufficiency, anti-crime and anti-drug activities, including providing adequate security, etc.

### **“Project Based” Funding And Tracking – Implemented Almost Exclusively Independent of Law and Regulation.**

- ❖ Not required in the law, except as suggested by the possibility of using prototypes properties to establish the formula.
- ❖ The regulation establishes the “project-based” principle at 24 CFR § 990.255(a) , which requires PHAs to manage properties “using asset management model consistent with the norms of broader multi-family management industry” and “implement project-based management, budgeting, and accounting.”
- ❖ All other “asset management” guidance is “sub regulatory”
  - Asset Management Resources sheet attached as [Appendix 1](#)
  - Most thorough – the “Supplement”, specifically,
    - *Changes in Financial Management and Reporting for Public Housing Agencies Under the New Operating Fund Rule (24 CFR part 990) (Rev. April 2007)*
      - *Supplement to HUD Handbook 7475.1 REV., CHG-1, Financial Management Handbook*
      - Note that Financial Management Handbook has been “*cancelled as a requirement, but retained*” on the HUD web page.

- Status is Guidance – Not Binding Program Requirements
  - Supplement and other guidance documents contain substantive requirements, occasionally couched as “recommendations.”
  - Regulations are generally required for any document issued by a federal agency that may be the basis of an enforcement action
  - At most, the PIH notices and the Supplement should be interpreted as safe harbors and should not be binding on PHAs.

**Investments** – The generally understood list of permitted investments of HUD funds seems to derive from a 1995 PIH notice on cash management, which bases its regulatory authority on 24 CFR 85.20, which establishes standards for financial management. See PIH Notice 95-27.

**FDS** (Financial Data Schedule) – HUD’s method for requiring reporting of financial transactions. It is essentially based on the financial administration requirements in 24 CFR part 85, subpart C. Among other things, PHAs must create financial management systems sufficient to prepared reports, permit tracing of funds, accurate and current disclosure of financial results of financially assisted activities, etc.

## **ASSET BASED MANAGEMENT: KEY RESOURCES**

### **HUD Background Documents**

- ❖ *HUD Asset management home page:* (<http://www.hud.gov/offices/pih/programs/ph/am/>)
- ❖ *Preparing for Asset Management: A Planning Document*
  - Great for introductory concepts and broad strokes
  - On HUD web page as “Asset Management Planning”

### **HUD Issuances (most recent to oldest)**

- ❖ *Updated Changes in Financial Management and Reporting Requirements:* PIH Notice 2007-9 , issued with:
  - Supplement,
    - *Changes in Financial Management and Reporting Requirements*, a 61-page document that applies asset management principles to the existing but canceled Financial Management Handbook (74675.1, REV. CHG-1)
  - Supplement supporting materials (not part of Notice)
    - **Summary:** 8-page summary of key issues in the Supplement
    - **Responses:** HUD responses to public comments on the September 2006 supplement
  - Federal Register Notice explaining that final guidance on asset management available in on HUD web page. *Public Housing Operating Fund Program: Guidance on Implementation of Asset Management*, 72 FR 19211 (Apr. 17, 2007)
- ❖ *Procurement Handbook*
  - HUD Handbook 7460.8 REV 2, issued March 2, 2007
  - Updates existing PHA procurement handbook to include, among other things, streamlined small purchase, mixed-finance, and asset management.
  - <http://www.hud.gov/offices/pih/publications/handbooks/index.cfm>
- ❖ *Expedited Waiver Process to Assist with Transition to Asset Management*, 72 Fed. Reg. 9348 (Mar. 1, 2007)
- ❖ *Further extension to October 15, 2007* (with compliance date of September 30, 2007) via notice posted on HUD website, April 10, 2007
- ❖ *Extension of Stop Loss Deadline to April 15, 2007*, PIH Notice 2006-35 (Sept. 25, 2006)
- ❖ *Guidance on Implementation of Asset Management:* 71 FR 52710 (Sept. 6, 2006)
  - Short notice outlining basic principles of asset management
- ❖ *FY 2007 Subsidy Notice:* PIH Notice 2006-30 (Aug. 17, 2006)
  - Requirements for FY 2007 Subsidy filings
- ❖ *Stop Loss Notice.* PIH Notice 2006-14 (March 22, 2006)
  - HUD used as baseline for all asset management requirements until issuing Supplement
  - Attaches maximum permissible management fees for all PHAs
- ❖ *Calculating PEL Notice:* 71 FR 602 (January 5, 2006)
- ❖ *Correction to Final Rule::* 20 FR 61366 (October 24, 2005)
  - Corrects implementation dates only
- ❖ *Final Rule:* 70 FR 54984 (September 19, 2005)
  - The authority on operating subsidy and asset based management

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## Public Housing Administrative Reform Structure Focus Group

### ACC, DOT and Structural Documents

**Background**— This Focus Group will discuss the Annual Contributions Contract (“ACC”), Declaration of Trust (DOT”) and other documents between HUD and a PHA. Unless otherwise noted the below summarizes the applicable statutes and not regulations or other guidelines.

**DOT Statutory Requirements**— Section 9(d). PHAs must enforce use restrictions on all property developed with public housing funds, although the length of restrictions depends on the use of funds:

- ❖ Development—40 years, starting at time of first occupancy, plus ten year tail
- ❖ Modernization—20 years, starting after most recent modernization is finished, plus ten-year tail

If both obligations apply, the latest period governs. HUD enforces this through a “declaration” that the property is “held in trust” for HUD for the term of the use restriction which is recorded on the property. Nothing in the statute provides for release of these use restrictions, other than through demolishing or disposing of property, at the end of the use period.

### ACC Statutory Requirements

**Required ACC Provisions** – Section 6(c). ACCs must contain the following:

- HUD may determine that changed circumstances in the locality demand that the PHA review and revise its income limits
- PHA must annually determine and certify that all residents meet the established income limits
- PHA must notify all applicants of their eligibility for admission.
  - Ineligible applicants - PHA must provide specific grounds of ineligibility and an informal hearing, if requested by applicant.
  - Eligible applicants - PHA must inform eligible applicants of eligibility and approximate date of occupancy.
- PHA must comply with HUD regulations and requirements designed to promote sound management practices including requirements relating to:
  - Admission preferences
  - Rent collection
  - Tenant-management relationships
  - Homeownership opportunities
  - Accounting systems for rent collections and operating costs
  - Compliance with lead based paint requirements
- All public housing property must be exempt from state and local taxes (unless qualify for the election under Section 35(f))

**Contributions and Contributions Contract – Section 5.**

- Annual contributions shall be memorialized in a contract (an “ACC”).
- An ACC may cover one or more public housing properties. If it covers multiple properties, it may treat them collectively as one project.
- HUD may not execute an ACC for a new project unless the PHA has notified the chief executive office of the locality of such use and provided information reasonably requested by the locality.
- HUD and the PHA may amend or supersede an ACC by mutual agreement.

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