PHA Bill of Rights

Prepared by Public Housing Authorities Directors Association

Public Housing Authorities are not agents or instrumentalities of HUD, yet the department is micromanaging the everyday decisions of housing providers. PHADA affirms that PHAs should retain the right to run their programs with "the maximum amount of responsibility and flexibility"[1] established by law.

[1] U. S. Housing Act of 1937, Section 2

PHA Bill of Rights

Raymond Buday, Esq.
Principal Author

Nancy Walker
PHADA President

Public Housing Authorities Directors Association
511 Capitol Court, NE
Washington, DC 20002–4937
Phone: 202-546-5445
Fax: 202-546-2280
www.phada.org

Prepared by Public Housing Authorities Directors Association

Public Housing Authorities Directors Association
511 Capitol Court, NE, Washington, DC 20002-4937
phone: 202-546-5445 fax: 202-546-2280 www.phada.org

Dear Housing Professional,

PHADA feels compelled to publish this PHA *"Bill of Rights"* to rebalance the Housing Authority relationship with HUD. In the following pages, we remind readers that housing authorities are separate, **independent** public entities established under state and local laws. Some in Washington fail to recognize our independent status, and that lack of intergovernmental respect sometimes results in fewer people housed and at greater expense than otherwise would happen.

There are many hard-working career employees at the Department who are dedicated to our mutual mission. They bring experience from years of working with our programs or from the nonprofit, public housing and private sectors. However, as an institution, the agency has overlooked the U.S. Housing Act of 1937 which states that well-performing PHAs should have **"the maximum amount of responsibility and flexibility."** This *Bill of Rights* intends to make it clear that Housing Authorities are not a division of HUD.

We need the Department to recognize reality. Too many regulations are "one size fits all" even though most PHAs are small and medium-sized entities with limited staff. These smaller entities pose the least financial risk to HUD and taxpayers. Instead, regulations are too often aimed at the minuscule minority: the worst performing agencies and the most publicized abuses.

The *Bill of Rights* gives examples of unnecessary data requests, duplicative reporting, and unreasonable timelines to deliver information, which is exacerbated by the Department's faulty IT systems. Many PHAs report having to refill and refile electronic forms after data disappears from HUD screens or cannot be transmitted. Sometimes staff must work on weekends or late nights to send data because HUD's IT systems won't accept it during the work week.

We need those in Washington to recognize the reality of a public housing inventory that for years has been starved of capital funding and operating revenue, and a voucher program without adequate administrative funds. The cumulative capital shortfall in public housing has topped $26 billion during the Obama years while voucher administrative fees have fallen short by $3 billion. This lack of support threatens the loss of more public housing and means fewer families able to rent affordable homes.

So here is our Public Housing Bill of Rights, a declaration of principles for an equal working relationship with the federal government. This partnership needs to be rebalanced and made more effective in providing affordable housing and serving our communities. HUD can start with less regulation, more streamlined rules, and realistic reporting requirements. With these steps, we can do better together.

Nancy Walker
PHADA President
Autumn 2016

Preamble

Local public housing authorities (PHAs) are deeply committed to the provision of affordable housing in their respective communities. PHAs are independent public entities, creatures of state and local law, and manifestations of federalism under the U. S. Constitution and Executive Order 13132. PHAs are mutually cooperating organizations with the U. S. Department of Housing and Urban Development (HUD) – as well as with state and local government, other federal entities, private organizations, taxpayers, and the beneficiaries of affordable housing programs.

This status and relationships were established more than 75 years ago in the U. S. Housing Act of 1937. Section 2 of that law vests "in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration."

Unfortunately, a multitude of actions and inactions by HUD over an extended period of time have been antithetical to these important principles to the detriment of the mission of PHAs to create and maintain as many assisted dwelling units as possible for low income families.

This is so, despite Executive Order 13132, executed by President William Clinton on August 4, 1999, which requires HUD and other federal agencies conform to principles of federalism and "adhere, to the extent permitted by law, to ... criteria when formulating and implementing policies that have federalism implications."

This is so, despite Executive Order 12866, executed by President William Clinton on September 30, 1993, which provides that HUD and other agencies "... should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need ... [and] In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, **including the alternative of not regulating**." (emphasis supplied)

The inevitable consequences of these failures have been excess costs and resultant expenditures of funds that could have been better devoted to the core goal of direct provision of housing assistance. Accordingly, in order to refocus policies and program implementation to the core goal, it is necessary for the PHA community to hereby reaffirm the above laws and restore proper relationships by declaring this Bill of Rights:

PHA Rights

I. A PHA and HUD have a joint mission to create, maintain, or assist as many decent, safe, and sanitary affordable housing units for lower income Americans as possible within available resources.

II. A PHA and HUD have a joint and several obligation of the highest order to be good stewards of funds provided by the American taxpayer for this mission, including an obligation of efficiency as well as protection.

III. A PHA is an independent public entity, a creature of state and local law, and a manifestation of federalism under the U. S. Constitution and Executive Order 13132.

IV. A PHA is not an agency, instrumentality, or affiliate of the U. S. Department of Housing and Urban Development or other agency of the federal government.

Freedom from program demands or impositions not reasonably achievable because of inadequate funding, unless such demands are clearly mandated by applicable law or contract.

V. A PHA's relationship with HUD is solely defined by:

- The Constitution of the United States.
- Applicable statutory law, particularly the U. S. Housing Act of 1937, as amended.
- Duly authorized regulations adopted under the Administrative Procedure Act and other applicable law.
- Contractual obligations, notably Annual Contributions Contracts and Housing Assistance Payments Contracts.

VI. In carrying out its mission in accordance with the above legal foundations, the PHA is entitled to certain rights and relationship obligations, including but not limited to the following:

1. Manifested respect for the independent legal status of PHAs on the part of all HUD officials at all times and in all circumstances.

2. Genuine and constant adherence to cost-benefit principles in all aspects of HUD program administration.

3. Freedom from imposed data and information *systems*, except those that meet the following criteria:

(a) Adopted through Office of Management and Budget requirements.

(b) Clearly essential to ensuring compliance with a specific statutory obligation.

(c) The result of a development and testing process that assures performance and avoids or significantly minimizes problems.

(d) Not imposed without prior adequate training of PHA and HUD users.

(e) Not implemented without designation of specific accountable HUD contact person(s) for assistance and resolution of problems.

(f) Documentation of satisfaction of the above criteria, including specific data elements as well as systems as a whole, prior to imposition.

4. Freedom from imposed data or information *requests*, except those that meet the following criteria:

(a) Clearly essential to ensuring compliance with specific statutory obligations.

(b) Not made in circumstances where the data or information is or should be available through HUD-imposed systems meeting the above criteria.

(c) Made by HUD officials at the management level and communicated to PHA management officials in written or electronic form to the maximum extent feasible.

(d) Accompanied by explanation or assurance of satisfaction of the above criteria.

Nothing in this section VI.4 shall be interpreted as inhibiting informal communications and engagement characteristic of good business practices.

5. Freedom from unreasonable delays in processing of applications, requests, and queries from the PHA.

6. Freedom from oversight of, or actions pertaining to, the personnel practices of the PHA, except as may be specifically required by statute or contract provisions.

7. Freedom from program demands or impositions not reasonably achievable because of inadequate funding, unless such demands are clearly mandated by applicable law or contract.

8. Freedom from HUD program reviews or monitoring unless (1) fully and demonstrably warranted by anticipated important benefits relative to the costs of such review to the PHA and HUD in accordance with specific legal and contractual requirements, and (2) based on a program or process with a foundation of reasoned risk management.

9. Freedom from contractual provisions and certifications that are not clearly essential for compliance with applicable federal law or to ensure protection of funds originating with the federal government.

10. Freedom from impositions or requirements relating to PHA-owned personal and real property or the disposition thereof unless such impositions or requirements are clearly mandated by applicable law or essential for protection of federal funds.

11. Freedom from sanctions without an appeals process that, to the maximum extent feasible, results in determinations by independent decision makers or decision makers not originally involved in the sanction proposals.

Legislation that eliminates requirements with significant costs that are not essential to the core housing mission.

12. A right to business and customer service practices from HUD and its officials comparable to those found in the private sector, including, but not limited to, the following:

(a) Prompt processing of applications, requests, and queries from the PHA within time frames characteristic of the private sector.

(b) Establishment of accurate and realistic target time frames for decisions on applications, requests, and queries, with, to the maximum extent feasible and appropriate, time frames after which a failure to respond shall be deemed approval.

(c) Designation of specific HUD officials as contact persons with genuine accountability for processing and support.

13. A right to vigorous advocacy on the part of HUD for legislative improvements that will result in the greatest good for the greatest number, i.e., more and better dwelling units for low-income families through lower administrative costs, including, but not limited to:

(a) Legislation that eliminates processing and paperwork that is not clearly essential to assuring core compliance with federal law, such as eligibility, rent determinations, and fair treatment of residents and stewardship of PHA assets.

(b) Legislation that eliminates requirements with significant costs that are not essential to the core housing mission.

(c) Appropriations that are reasonably related to calculated needs or, failing that, adjustments, to the extent feasible, in performance expectations commensurate with funding shortfalls.

PHA Commitment

VII. In consideration of these rights, a PHA must:

(a) Conduct its operations in full accord with applicable law.

(b) Comply fully with its contractual obligations.

(c) Zealously maintain stewardship of its funds and other assets at the highest level.

(d) Treat its applicants and program participants in accordance with the highest standards of respect, fairness, and equity.

(e) Maximize the number of assisted families in the community within available resources.

(f) Be highly responsive to the needs of HUD in carrying out the core mission.

PHA BILL OF RIGHTS – THE BACKGROUND

The PHA Bill of Rights does not emerge from occasional unsatisfactory experiences that might accompany intergovernmental efforts to carry out a difficult mission. Rather, each of the thirteen principles – rights – reflects a need to remove obstacles that deeply impair achievement of the mission to provide affordable housing. PHAs do not merely seek "relief" from minor irritants. They propose nothing less than a return to the proper delineation of the respective roles of PHAs and the federal government.

A PHA:

- *Sees the faces of needy families, those who are fortunate to live in affordable housing, as well as those who remain on waiting lists or cannot even get on waiting lists.*
- *Must meet those needs with very limited resources.*
- *Is burdened with enormous and, often, avoidable costs imposed by administrative rules.*
- *Is thus forced to expend disproportionate amounts on collateral regulatory requirements that could have been expended for the direct benefit of residents.*

In short, HUD impositions rob beneficiaries in a major way. Too often, HUD fails to "keep the main thing the main thing."

The thirteen enumerated rights arise from actual obstacles to mission achievement. Here are just some examples:

Asset Management

The prime and timely illustration of the need for stated principles for proper interaction between the federal government and PHAs can be found in the recent determination by the department to "federalize" – that is, regulate – net revenue from public housing operations under the Asset Management program. This is an astonishing turnaround from one of HUD's actual successes: application of private market operational principles to administration of a publicly funded program. This action unfortunately is an example of a scenario that is all too frequent. It goes like this:

1. The Office of Inspector General (often a regional IG) detects some abuse, typically involving a very limited number of PHAs.
2. The IG makes recommendations for corrective action, usually including recovery of funds from non-federal sources – *from entities that very likely have no unencumbered funds.*
3. The auditee and HUD respond, the latter sometimes submissively conceding, it not being prudent to dispute the IG, even on matters that can involve methods upon which reasonable managers can legitimately differ. No one wants to appear soft on stewardship.
4. HUD then expends considerable resources to carry out the IG's wishes, sometimes creating reformative actions and procedures far out of proportion to the extent of the offense. This is known, pejoratively, as "spending a buck to save a dime."
5. Major resources are thus diverted from "the main thing."

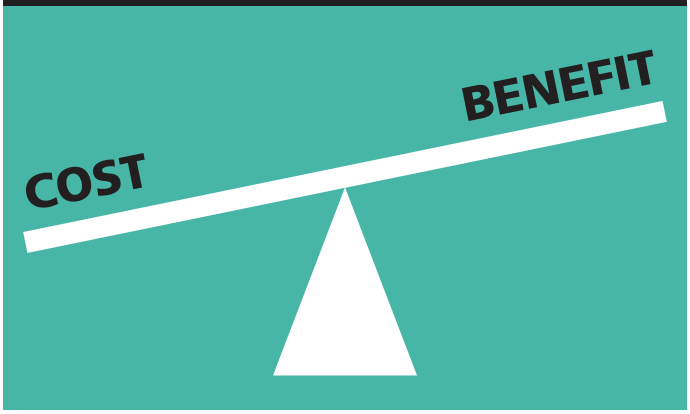
Such has now become the case with asset management – with a most regrettable twist.

Almost ten years ago, HUD and the PHAs engaged in a genuine business-like negotiation to arrive at a rule that would fundamentally change the public housing operating mode. The rule would emulate the advantages of private-sector property management and thereby permit the greatest good for low-income families and individuals with always limited resources. By shifting funding, budgeting, accounting, and management to the property level, this monumental change would simultaneously improve transparency and performance in public housing, while providing PHAs with incentives to increase their efficiency through the creation of a fee-for-service model and central office cost centers (COCCs).

HUD argued in favor of this with great vigor, saying that PHAs should operate like other multifamily housing providers, something with which HUD was, of course, very familiar. The transition was generally successful. It was a great thing for the American taxpayer. *Imagine: cost savings without reduction in service.*

In 2014, enter the IG. As is their common technique (itemized above), the resultant June 30, 2014 report only examined a handful of poorly run housing agencies, extrapolating results to the entire public housing program. The underlying

After abandoning its own well-reasoned rebuttal, HUD is apparently preparing to tell PHAs, *"Never mind all the time, costs and effort of converting thousands of properties to asset management."*



situation is that the IG appears unable to embrace a system that incentivizes operations and maximizes benefits for the target population – "keeping the main thing the main thing." Seemingly, the IG institutionally prefers a costly hyper-regulated environment in which rooting out rogue actions trump the cost and benefits of the program mission. Again, the forgotten phrase is "costs versus benefits."

For a while, this story had a good ending. The Office of Public and Indian Housing (PIH) response to the IG findings was aggressive and substantial. It noted the many flaws in the IG report, adding that the transition "took immense time and resources to accomplish and was attained in a completely transparent manner." The uncommon resistance of PIH warmed collective hearts in the PHA community, suggesting that the department actually had confidence in a program and was willing to push back.

Such was not to be. PHAs are now facing the disheartening news that HUD is back-peddling completely. There apparently is no notion of "mend, don't end" in the discussion. Rather, after abandoning its own well-reasoned rebuttal, HUD is apparently preparing to tell PHAs, "*Never mind all the time, costs and effort of converting thousands of properties to asset management.*"

It is troubling that the department is so submissive in this instance and doubly mystifying, considering that HUD responded that:

- The IG report is methodologically unsound and fails to recognize real estate practices and principles well established in other federally assisted housing programs.

* "Property owners who administer federally funded affordable housing programs should be held to the same high standards around operating efficiency and effectiveness, *regardless of their organizational or ownership structure*." [Emphasis added.]

- Defederalization of COCC funds is "consistent with Office of Management and Budget (OMB) guidance" and other federal government fee for service accounting practices.

Imagine the cost of reverting to the former system on the part of thousands of housing authorities that became much more efficient in their stewardship of federal funds; housing authorities who could thereby generate revenues that produced more low-income housing or additional support for residents not otherwise fundable through restricted public housing resources.

And what does this turnabout portend for the department's other notably successful program, the Rental Assistance Demonstration (RAD) program? This also is a bold innovation that brings private sector operational modes and incentives to create efficiencies with public funds. The very foundation of this program is trust on the part of PHAs that cutting the umbilical cord of decades of a highly prescriptive relationship with HUD PIH will not expose these public entities – and their communities – to serious harm.

Who is to say that the IG will not take a look at the RAD program and develop a dislike for it, perhaps based on a revelation of a disproportionately few bad actors? What costly regulations will be provoked that will gut the benefits of the program?[1]

The conclusion? If there is ever an illustration of the need for a document expressing intergovernmental rights, it is the lamentable experience surrounding asset management.

[1] Some troubling insight can be seen in the November 30, 2015 communication from the HUD director of the Office of Public Housing Programs congratulating PHAs with successful RAD conversions and then imposing – post-closing – a list of 12 responsibilities and reporting requirements. PHAs were under the impression, going into RAD, that closing shifted the oversight framework to the HUD Office of Housing. These questions were raised but five months later, no clarification has been forthcoming.

Demolition-Disposition

Another disturbing example of a HUD mindset that provokes the creation of a PHA Bill of Rights is the HUD demolition-disposition process, particularly revealed in the proposed rule published in the Federal Register on October 16, 2014. Although a final rule has not yet been issued, it provides a troubling illustration of the department's inability to understand the respective roles of PHAs and the federal government in the administration of public housing.

Even before the proposed rule had been issued, HUD went well beyond the statutory expectations of section 18 of the U. S. Housing Act of 1937 by issuing Notice PIH 2012-7 (HA). As was pointed out in joint comments by CLPHA, NAHRO, PHADA, and Reno & Cavanaugh, the notice erected barriers well beyond statutory requirements in order to pursue an agenda that has been neither endorsed through the legislative process nor put in place through APA rulemaking.

The proposed rule that followed is a perfect example of what the PHA Bill of Rights is intended to address. The text of section 18 captures very well the proper foundation for demolition and/or disposition of public housing property that was developed with federal assistance. Congress simply wanted to ensure that the federal investment, in the hands of local agencies, was sustained, both in terms of affordable housing units and protection of taxpayer funds, while respecting the independence of the local housing authorities. The latter is manifested in the statutory language *creating a presumption of HUD approval of demo-dispo applications.* Congress did not outline criteria for approval. Congress set restrictive standards for *disapproval.*

Unfortunately, the department has effectively reversed the process, seeming to decree that demo-dispo applications are much disfavored, requiring extensive and intensive detailed information and justifications bearing no recognition that local PHAs have a sound sense of what is best for their communities. **HUD staff need to understand that PHAs do not want to reduce the number of assisted families; they want to increase them. There are much less intrusive ways to ensure these outcomes than what is imposed by the current process and certainly that which is proposed in the Proposed Rule.**

The HUD demolition-disposition process ... provides a troubling illustration of the department's inability to understand the respective roles of PHAs and the federal government in the administration of public housing

Consider these items in the proposed rule:

- A certification in demolition-only applications that the land will be used for low-income housing purposes. [The law does not say or contemplate this, and, in any event, there is total protection against rogue actions in the form of the recorded declarations of trust.]
- Identification of the land for replacement units *at the time of disposition application*. [There is neither need nor statutory basis for that. Often the land for new units cannot be identified at time of disposition.]
- Worse yet, the proposed rule would require a "financing plan" for development of replacement units that HUD will "evaluate." [One can only imagine the additional time that will be required for the HUD "evaluation" or the cost to HUD to train its staff to evaluate complex tax credit transactions for replacement units utilizing disposition sales proceeds.]

- The proposed rule would impose a huge increase in data gathering and greatly expand reporting requirements, much having to do with the personal characteristics of the displacees. [Does HUD really need to know the *religion* of the families in order to approve a dispo application? Do they really need to know this information about the families on the *waiting list?*]

These are just a few of the unjustified features of the proposed rule, cited not to repeat comments in the rule-making process, but rather to illustrate the institutional attitude that has gradually grown to see PHAs as untrustworthy vehicles of the department.

These perceptions are not exaggerated. Consider the Snohomish County Housing Authority case. From what appears in the 2014 court decision, the PHA filed a laudable disposition application proposing lease of its 210 public housing units to a nonprofit affiliate. According to the court decision, the PHA "planned to use proceeds of the disposition to perform capital improvements and maintenance on the 210 units and to acquire an additional 46-unit building to use for low-income housing." The PHA pointed out that under the financing structure applicable to public housing, it could not meet its projected capital needs at the 210 units over the next 20 years.

Rather than work with the PHA to achieve a commendable improvement in the local affordable housing stock, HUD engaged in an all-too-familiar exercise: diligently looking for ways to delay or deny the application, rejecting it three times. Finally, the PHA was forced to take the expensive step of filing a federal lawsuit simply to overcome a frustrating failure to receive a properly considered decision.

The court's findings in favor of the housing authority, demonstrate the need for the PHA Bill of Rights. The court said HUD's focus on and apparent disbelief in the housing authority's certification that it could not meet the capital needs of the 210 units under the current public housing system was in error. It also found that HUD violated the law by disregarding broader considerations and by ignoring the acquisition of 46 additional low income units to the housing authority's portfolio.

[2] Although these illustrations are in a proposed rule, there is no question that these unauthorized queries have been already making their way into the demo-dispo process.

PHAs do not want to reduce the number of assisted families; they want to increase them.

The decision in this case is worthy of quotation at length, but this small excerpt represents the experience of many PHAs with demo-dispo:

"The effect of HUD's tunnel vision, its singular focus on HASCO's capital needs and resources with respect to the 210 public housing units, was to leave the court with no basis to conclude that HUD even considered these broader aims. Despite a year and a half of wrangling between HASCO's initial application and HUD's final denial of its reconsideration requests, neither HASCO nor the court can ascertain whether HUD has any information that is "clearly inconsistent" with a statutorily-required certification.

HUD's failure to follow its statutory and regulatory mandate means that it violated the APA. When an agency makes a decision "based on an improper understanding of the law," it commits an abuse of discretion in violation of 5 U.S.C. § 706(2)(A).

Philadelphia Housing Authority's Paschall Village development in southwest Philadelphia.

The Fair Housing Rule and Tool

Another example of where HUD is overstepping and placing demands on PHAs that are not reasonably achievable is found in the Affirmatively Furthering Fair Housing (AFFH) rule and accompanying Assessment of Fair Housing (AFH) tool. The AFH tool requires analyses and planning by PHAs beyond their expertise or their ability to influence outcomes, including the following examples:

- How school-related policies limit or enhance families' access to proficient schools by race/ethnicity, national origin, or disability.
- Voucher holders' and applicants' access to employment opportunities by race/ethnicity, national origin, familial status, or disability.
- Program participants' and applicants' access to transportation.
- Geographic distribution of people with disabilities in the jurisdiction and the region by type of disability.
- Whether people with disabilities in the jurisdiction and the region have more or less access to public infrastructure (e.g., sidewalks, pedestrian crossings, pedestrian signals, transportation, proficient schools, educational programs, and jobs).

In addition to unreasonable demands for information only marginally related to the core housing mission, the AFH tool requires agencies to prepare and report **information that HUD already has in its possession.** Such duplicative reporting requirements are a key concern as expressed in the Bill of Rights. Some examples in the AFH tool include:

- Demographics concerning public housing property residents and voucher holders.
- Comparison of these demographics with the population of agencies' jurisdictions and with the income-eligible population.
- Locations of public housing properties and addresses of voucher holders.

PHAs already submit much of this information through HUD Form 50058 Family Report, and the department has the same access as PHAs to census data and data available through HUD's AFFH data mapping tool.

Related to this point, HUD has consistently promised that it will make a significant amount of AFH related data available in maps and tables on its website for use by agencies completing their AFHs. Unfortunately, the only useful information currently available on HUD's website is for CDBG and HOME entitlement community jurisdictions and regions. These areas may conform to some PHA areas

of responsibility, but data maps and tables for many PHAs remain unavailable. One reasonable option for HUD is to suspend its actions on these AFH tools until all relevant data maps and tables become available. Given HUD's track record on IT related tools, PHAs have significant justified fears that this very complicated new AFH process may take effect without the promised support of AFH data and maps.

Criminal Records

HUD's intrusion into the local management of assisted housing—public as well as private—has been extended through an extraordinary push to reduce the ability of housing providers to apply occupancy criteria related to criminal conduct. The department raises the specter of costly and time consuming fair housing complaints when a housing provider includes criminal conduct in its screening process. Apparently, the department desires that PHAs open the doors to the "re-entry" of criminals into society and specifically to scarce assisted housing.

This unusual effort raises troubling concerns. First and foremost, the several extensive rules, "guidance", webinars, etc., display a lack of respect for PHA management capabilities. PHAs are well aware that the denial or termination of assistance requires a proper level of proof. PHAs are fully capable of considering mitigation and displaying special mercy where warranted. PHAs are quite cognizant that anything they do can be the subject of a fair housing complaint, alleging either discrimination in intent or effect.

HUD is unfortunately manifesting an urge to micromanage the everyday decisions of housing providers. PHAs are not agents or instrumentalities of the department. HUD does have certain regulatory authority and has exercised it. Notably, for decades HUD has been, and is, enforcing fair housing laws. If a practice allegedly violates fair housing law, the affected person can file a complaint within the detailed HUD process. Otherwise, HUD should let PHAs and other providers run their programs, making their judgments about admissions and determinations within the regulations that are in place.

Second, ironically, HUD is effectively *inviting* fair housing complaints against housing providers with its implicit demand for "individualized assessments."

President Clinton: "I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crimes and peddle drugs should be one strike and you're out."

Third, the HUD push runs counter to an important goal of avoiding exposure of residents and neighbors to possible harmful behavior on the part of those who have shown they are capable of such behavior. Indeed, the recent HUD materials are very clearly retreats from the One Strike program, which was upheld by a unanimous vote of the U.S. Supreme Court in the 2002 *Rucker* decision. The department might well ask the question, *whatever happened to this statement of President Clinton:*

> "I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crimes and peddle drugs should be one strike and you're out. I challenge every state to match federal policy to assure that serious violent criminals serve at least 85 percent of their sentence."

Fourth, this is another example of HUD's failure to and contemplate costs and benefits. The "main thing" here is the core effort to provide decent housing *to what must be acknowledged is a fraction of the families that need it.* Imagine the typically long waiting list faced not only by PHAs but by private providers and the need to prioritize

housing assistance to meet local needs. Some families already live in the provider's jurisdiction and may need housing just as badly as families moving into a particular area. Some families have household members who work. Some have seniors. Some have members with disabilities. Some are homeless. All of these can be the beneficiaries of local preferences, reflecting various judgments about what is good for the community and its low-income population and *what is proper in allocating scarce resources*.

With these realities and common practices, the policy question is this: When considering families without convicted felons versus those with a member who is a convicted felon, who should be admitted to fill these limited vacancies? Should a doctrine of "first come, first served" outweigh distinctions of past criminal behavior? Scarce housing is different from voting rights and other unlimited societal benefits. So long as a practice does not unlawfully offend established legal rights, there is a place for *HUD-supported* discouragement of criminal conduct by the time-honored recognition of consequences for bad behavior.

In short, beyond its specific law enforcement responsibilities, HUD should shy away from intrusion in local judgments in the management of housing. Rather, resources should be focused on true civil rights enforcement.

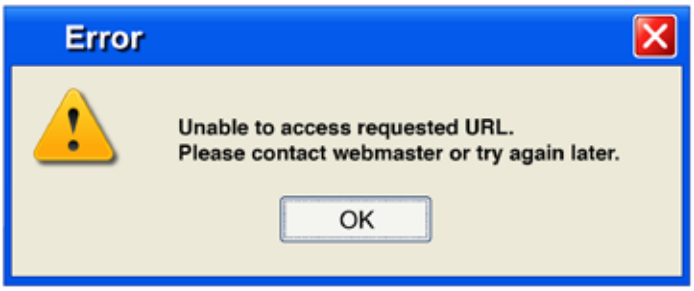
The Non-Smoking Rule

In late 2015, HUD proposed a rule that will require all PHAs to ban smoking within 18 months of the effective date of a final rule. Again, this is another laudable objective, but an unfunded mandate, that places demands on public housing agencies that are not contemplated for any other federally funded housing providers. If the administration believes so strongly in the policy behind this rule, the department should encourage the establishment of smoke-free policies in ALL affordable rental housing programs funded by the federal government. This proposed rule directly opposes congressional direction to the department to expand streamlining, increase local flexibility and limit or reduce unnecessary regulatory burdens.

Rather than imposing another *one-size-fits-all* requirement, HUD should respect the independence of local agencies and continue to allow them to adopt flexible policies on their own terms. Indeed, the proposed rule ignores the approximately 600 agencies that have already implemented successful smoke free policies, utilizing local discretion that takes unique circumstances into consideration. For example, some agencies have instituted policies that allow some residents to smoke – in elderly designated buildings – on the basis that these individuals are less mobile and may be unable to easily leave their units or buildings. At a minimum, HUD should grandfather in these types of existing policies so PHAs that have already acted to protect residents from second-hand smoke are not penalized for doing the right thing.

The proposed rule ignores the approximately 600 agencies that have already implemented successful smoke free policies, utilizing local discretion that takes unique circumstances into consideration.

The department states that this rule was written with flexibility for agencies in mind, but it would do exactly the opposite. The proposed rule lacks flexibility and discretion and mandates very specific requirements with little opportunity for local discretion. Additionally, HUD has indicated the final rule will be even more inflexible than what is proposed. For example, the proposed rule does not prohibit e-cigarettes. However, HUD states in the rule and the rule's FAQs that the it may prohibit the use of these products in public housing in the final rule.



HUD's existing Section 3 reporting system (Form HUD 60002) was unavailable, or "down," for more than a year and a half due to unanticipated technical problems.

Section 3

Section 3 requires that PHAs use funds to increase employment opportunities for residents. As presently written, this is another unfunded mandate that will lead to more data-related and reporting problems for local agencies already struggling to operate their programs in the current budgetary environment. The added administrative and regulatory burden due to this proposed rule, without additional funding, would mean that an increased number of agencies, particularly small agencies, may be unable, through no fault of their own, to comply. Noncompliance could mean penalties and the denying or withholding of funds. Therefore, as PHAs try to avoid these sanctions, Section 3 requirements could conceivably take precedence over other, more essential activities. Additionally, any sanctions imposed by HUD will most likely be felt by residents and the services they now receive and have come to count on. If Congress and the department are going to impose this mandate, they must provide adequate funding.

Reporting requirements and procedures are another concern. A 2013 Office of the Inspector General (OIG) audit found that HUD did not enforce reporting requirements of the Section 3 program. If the department has been unable to monitor current compliance, it will not likely be capable of monitoring compliance successfully under the proposed rule, which is much more administratively complex.

HUD's existing Section 3 reporting system (Form HUD 60002) was unavailable, or "down," for more than a year and a half due to unanticipated technical problems. No agencies were able to successfully report Section 3 activity for FY 2013 or FY 2014. PHADA believes the department should address and correct its current monitoring and data collection processes before it mandates more burdensome reporting.

Duplicative Reporting

Other avoidable burdens of duplicative reporting are almost too numerous to itemize, illustrating the regrettable elevation of data gathering over fundamental mission. Consider these examples:

Field Office Requests. Some HUD field offices require housing authorities to submit monthly Housing Choice Voucher (HCV) utilization projection forms, usually with very little turnaround time. *All of the requested information on this form (e.g., number of units under lease, vouchers issued, total Housing Assistance Payment (HAP) amounts expended, etc.) is available in the Voucher Management System (VMS).*

Some field offices also routinely require agencies to complete the HCV two-year forecasting tool. While this tool can be helpful to agencies in many instances, it should not be arbitrarily required, particularly when any data needed by HUD headquarters or the field office is already available in VMS.

Similarly, there were requests from field offices for data on actual leased units and actual HAP from August 2015 – November 2015. The turnaround time given was one day, even though (a) the PHAs had just finished October and only just started November, and (b) HAP data for August and September was available in the PIC reporting system. It seems unreasonable to expect a PHA to have books reconciled on the first working day of the next month. At that point, any November data would be a very gross estimate. *Why not look in VMS for Aug./Sept. and PIC for Oct./Nov.?*

Temporary Compliance Waivers. Approximately 360 agencies were affected by Temporary Compliance Waivers – PIH Notice 2013-03, establishing a number of temporary streamlining measures, which were not extended. Agencies that voluntarily implemented these provisions provided to them by HUD were then required to complete justifications for the same provisions approximately two years later. A template was provided; however, agencies were required to submit very detailed information related to staffing and participants affected. These temporary streamlining provisions are likely to be made permanent with a final rule coming out sometime this year. So, agencies were, in effect, required to report on approved temporary activities that will become final this year. These agencies have not even received approval of their compliance waiver requests. It appears that HUD is not going to issue approvals and

Avoidable burdens of duplicative reporting are almost too numerous to itemize, illustrating the regrettable elevation of data gathering over fundamental mission.

is waiting for the streamlining rule to become final. *So, why did HUD make agencies spend time and resources completing them in the first place?*

HUD-Held Funds. Agencies that request HUD-held funds are required to send an email requesting the funds with documentation of the last three months of HAP expenses and the number of vouchers under lease. *All of this data is available in VMS, which PHAs report to monthly.*

Community Service and Self-Sufficiency Documentation of Status. PHAs were previously required to verify the CSSR status of all participants included in a HUD-generated report. As of the issuance of PIH Notice 2015-12, those participants that receive SNAP benefits are exempt. *Agencies will now be required to go through individual files again to redetermine exempt status.*

Housing Quality Standards (HQS) Inspection Oversight Project. Agencies that participated in the HCV Housing Quality Standards Quality Assurance Oversight Project were required to submit the same data to a HUD contractor, CGI, Inc. three, sometimes four times because the department was unaware of how individual agencies maintained inspection data.

Shelter Plus Care. The excessive and changing reporting requirements related to Shelter Plus Care require manual research and reports of new and retroactive data requests. The required reporting information changed. The department never collected certain information and, as a result of an Office of Inspector General audit, HUD needs additional information. Staff are required to go back and look at all files that the Homeless Management Information Systems (HMIS) is showing as errors because of the change. If not fixed, this could affect an agency's ranking for the application through the HUD Continuum of Care (CoC) for future grants (and CoC efforts in obtaining other HUD grants).

Veterans Affairs Supportive Housing. VASH is funded out of PIH and, as a result, all the information gets reported into the PIC system. However, VASH is also a component of the CoC, and therefore VASH information has to get into the annual homeless counts and Community Planning and Development reports. Agencies are thus required to manually fill out forms with VASH data, which then gets input into the HMIS system. *In short, VASH data is entered into PIC, then manually re-entered onto Excel spreadsheets, so that another person can manually enter that data into HMIS.*

Intrusions Into PHA Personnel Matters

Because of questionable acts on the part of a handful of PHA boards of commissioners regarding executive director salaries, Congress was moved to impose certain salary caps relating, it should be noted, to the federal funding for those salaries. Despite the limited extent of this issue[3], HUD redirected its resources and created another extensive paperwork process applicable to 3,500 PHAs to root out executive directors whose pay went beyond what the department presumably would think excessive – despite, it might be added, the headaches and challenges presented by administering hyper-regulated affordable housing programs.

It is understood that HUD had to comply with the statutory directive, of course, but one imagines that the Congress would like HUD to do this with a sense of costs, benefits, and efficiencies directed at a fairly special goal. Suffice it to say, there have been few, if any, reports of salary abuse since the initial disclosures, but the costs roll on.

[3] All or nearly all of the perceived high salaries involved PHAs with significant sources of non-HUD funds not subject to the statutory mandate.

CONCLUSION

The PHA Bill of Rights reflects a need to remove obstacles that deeply impair achievement of the mission to provide affordable housing. The thirteen principles enumerated here propose nothing less than a return to the proper delineation of the respective roles of PHAs and the federal government. **PHAs are independent public entities created by state and local laws**, a manifestation of federalism under the U.S. Constitution, and are cooperating organizations with HUD. The role is an intergovernmental one as separate, cooperating organizations.

Unfortunately, a multitude of actions and inactions by HUD over an extended period of time have damaged this relationship and greatly hindered the ability of Housing Authorities (HAs) to create and maintain as many assisted rental units as possible for low income families. Too often, HUD has failed to weigh the consequences of its regulations or even consider not issuing superfluous rules. The end result has been excess costs and expenditures that could be better devoted to the core goal of providing housing assistance.

HAs are not agents or instrumentalities of the Department. HAs are not a division of HUD. Overly-prescriptive rules exhibit a mistrust that HAs are committed to the housing mission. HUD's own reporting requirements often overwhelm the capacity of its outdated and erratic IT systems. Some HUD data demands and deadlines for reporting data have been unreasonable.

HAs have a right to vigorous advocacy on the part of HUD for legislative improvements. We need legislation that eliminates processing and paperwork not clearly essential for compliance with federal law and abolishes requirements that carry significant costs not essential to the core housing mission. We need appropriations that are reasonably related to calculated needs, or, failing that, an adjustment in performance expectations in proportion to funding shortfalls.

In return for these thirteen principles—these rights—HAs are committed to faithfully following applicable law, complying fully with contracts, and zealously maintaining stewardship of funds and other assets. Applicants for housing and those we house will be treated fairly and equitably. HAs will house the maximum number of assisted families with available resources. And we will be highly responsive to the needs of HUD in carrying out the core mission.

Housing Authorities meet the basic human need of decent, safe and sanitary housing with very limited resources. We see the faces of needy families every day – those on waiting lists and those who can't even get on a list. In many cases, they are a step away from homelessness. HAs are burdened with enormous and often avoidable costs imposed by administrative rules. We are seeking a renewed, more practical relationship with HUD. One that is cost effective for taxpayers and houses the most low income families possible.

Public Housing Authorities Directors Association
511 Capitol Court, NE, Washington, DC 20002–4937
Phone: 202-546-5445 Fax: 202-546-2280
www.phada.org