

THE 2015-16 YEAR IN REVIEW

August 2015 - August 2016

If you are wondering why you've seemed extra busy this past year, it's likely because we've had a lot of major changes come down over the past twelve months. Some were finalized, others are still pending. I'm going to run through what we think are the most important things that have hit us, both at the federal and state level.

FROM FEDERAL GOVERNMENT

From HUD

FAIR HOUSING

Last July HUD published a final rule on Affirmatively Furthering Fair Housing which replaces the current Analysis of Impediments (AI) requirement with a new Assessment of Fair Housing (AFH) requirement. HUD developed tools for helping PHAs and local governments do these assessments and avenues for collaborations between PHAs and local governments.

We also had a notice from HUD in November regarding using arrest records alone to deny housing assistance.

STREAMLINING RULE

We got the long-awaited Streamlining Rule which offered both mandatory and optional actions to try to ease administrative burdens on PHAs. Among the many things in the rule were

- every 3 year verification of fixed incomes
- limiting the EID to 24 months
- option to make quarterly utility reimbursement payments for amounts of \$45 and under
- for mixed rent purposes, you can use the flat rent amount for the maximum rent
- simplified the grievance procedure
- provides for biennial HQS inspections

AGENCY PLANS

In October, HUD made some major changes to forms used in submitting the agency plan. Main things were:

- Created separate templates for Annual and 5-year Plans
- Created separate annual plan templates for Standard/Troubled PHAs, High Performer PHAs, HCV-only PHAs, and Small PHAs.
- Created a separate Civil Rights certification form for Qualified PHAs to submit every year

- Combined the civil rights certification with the other plan certification forms for non-qualified PHAs
- Eliminated the following forms as part of the PHA Plan submission:
 - * CFP Perf and Eval Forms
 - * Cert. for Drug Free Workplace
 - * Cert. of Payments to Influence Federal Transactions
 - * Disclosure of Lobbying Activities forms

CAPITAL FUNDS PROGRAM

HUD finally published a long-awaited CFP Handbook in April. It has been almost three years since publication of the final CFP regulations which combined modernization and development, updated and streamlined many of the CFP and development requirements and included energy requirements. This handbook covers all the CFP requirements and changes.

PROCUREMENT

We had to update our procurement policies to conform with the Uniform Guidance (commonly referred to as the Supercircular). OMB combined several circulars guiding government spending and audits into one Uniform Guidance and put all the requirements in 2 CFR 200. Key changes coming out of this guidance were:

- references in our procurement policies needed to be changed to 2 CFR Part 200 instead of 24 CFR Part 85.
- the small purchase threshold, except for construction-related small purchases, was raised to \$3000.
- Single Audit threshold went from \$500,000 to \$750,000

FLAT RENTS

An Interim rule came out correcting the small and rural PHA dilemma of flat rents being too high. The rule allows PHAs to choose whether to use

- current FMRs as the basis for their flat rent
- switch to an FMR based on a smaller area, like county or zipcode
- apply to HUD for an exception based on market analysis

We were required to continue to

- adjust flat rents by tenant paid utility allowances

- limit annual flat rent increase for a tenant to 35%
- update flat rent schedules within 90 days of publication of annual FMRs

We were also told by HQ that if you happen to be one of those PHAs located in a county and zipcode where the FMRs are different, you must use the county figure for your Voucher program (unless you are part of the SAFMR demonstration program, which in Texas includes part of the DFW area and Laredo) but for your flat rents, you may choose the lower of the two if that helps your program.

UPCS-V

Were told that HUD is moving toward replacing HQS with standards closer to the UPCS used for public housing. According to HUD, the new standard will become required once it has been thoroughly tested and evaluated and a Demonstration period produces inspections that meet HUD's targets for quality and efficiency. The Demonstration has an anticipated start some time in 2016.

STUDENT ELIGIBILITY TUITION DEFINITION

To the definition of what is counted and not counted as income for eligible students in Section 8 programs, HUD added "other required fees and charges" to tuition as exclusions. For public housing, the full amount of financial assistance is still excluded.

SMOKE FREE PUBLIC HOUSING

HUD published a proposed rule requiring PHAs to implement Smoke Free policies. As you know, Smoke Free policies have been encouraged by HUD but have been optional until now. The new rule would REQUIRE such a policy for all PHAs. The final isn't expected until sometime in the fall.

REAC BED BUG NOTICE

Effective February 1, 2016, inspectors are required to report the presence or existence of bedbugs at any property being inspected and enter any bed-bug infested unit that is part of the sample generated.

Even though units in the sample reported to have bed bugs must be inspected, the notice states that the presence and the treatment of bed bugs on a property will not be scored in the UPCS inspection.

MORS

HUD issued a new Management and Occupancy Review form for Multifamily Development.

NEW LAWS

2016 OMNIBUS BILL passed which includes key things of interest to PHAs

- Bill continues language exempting PHAs that own and operate 400 or fewer public housing units from asset management requirements in connection with the Operating Fund rule.
- The bill carries forward the FY 2015 Appropriations provision increasing the limit on fungibility for PHAs with 250 or more units of public housing to transfer up to 25 percent of their annual Capital Fund grant to operations. Bill provides HUD the authority to waive the transfer limit to fund activities related to anticrime and antidrug activities, including the costs of providing adequate security for Public Housing residents such as above-baseline police service agreements. Small agencies would retain their flexibility to make fungible 100 percent of their annual grants.
- The bill prohibits HUD from requiring or enforcing the Physical Needs Assessment for all PHAs.
- The bill once again includes language prohibiting PHAs from using any Tenant-Based Voucher, Operating Fund, or Capital Fund dollars to pay any amount of salary above the base rate of pay for level IV of the Executive Schedule, or \$158,700 for FY 2015. This restriction includes salary as well as bonuses or other incentive pay.

HR 3700, -- "Housing Opportunity Through Modernization Act of 2016" (HOTMA) passed both houses and has been signed by the president. The following are some key provisions that we believe would be of most interest to PHAs. The first 24 pages pertain to Public Housing and Section 8.

Annual income calculation: requires use of estimated annual income for initial occupancy/assistance. For annual reviews, past year's income will be used.

Adjusted Income: deduction for elderly and disabled families will be increased to \$525.

Health and medical expenses deduction: changed to the amount by which 10% (currently 3%) of annual family income is exceeded.

Income from Assets: imputed returns on assets will be excluded from income unless net family assets exceed \$50,000.

Limitation on public housing tenancy: for any public housing tenant determined to have income in excess of 120 percent of the area median income for two consecutive years, law requires a PHA either to charge the tenant the greater of the fair market rent or the amount of taxpayer subsidy for the unit, or terminate the tenancy of such tenant.

Limitation on eligibility for assistance based on assets: requires that any assisted dwelling unit may not be rented and assistance may not be provided to any family whose net family assets exceed \$100,000, as adjusted for inflation, or a family who has a present ownership interest in real property that is suitable for occupancy by the family as a residence.

Collection of utility data: bill requires HUD to collect and publish utility consumption data to assist in the establishment of tenant-paid utility allowances by PHAs, provided the data can be collected in a cost effective manner

Capital Replacement Reserves: will allow PHAs to voluntarily establish Capital Fund replacement reserves.

Subsidy Flexibility: will allow for PHAs to transfer 20 percent of their Operating Funds to their Capital Fund.

Project-Based Voucher Program: PHAs would be able to change the amount they may project-base from 20 percent of their voucher funding to 20 percent of their authorized voucher allocation, allowing most PHAs to project-base additional units. Additionally, those PHAs that have units targeting homeless individuals and families, veterans, elderly households, disabled households, or units in areas where vouchers are difficult to use, would be permitted to project-base up to 30 percent of those targeted units. In areas where vouchers are difficult to use and in census tracts with a poverty rate of equal to or less than 20 percent, PHAs may provide project-based voucher assistance for up to 40 percent of the units in a project.

Special Assistant for Veterans Affairs: creates a new position of Special Assistant for Veterans Affairs that reports directly to the Secretary of HUD

PHAs added as eligible recipients of Emergency Solutions Grants (McKinney-Vento Homeless Assistance Act)

We will be awaiting HUD guidance through regulations for implementation.

FROM THE IRS...

- The mileage rate went down to 54 cents from 57.5 cents in 2015.
- Agencies with 50 or more full time employees got a taste of the first reporting requirements under the Affordable Care Act.

FROM DEPARTMENT OF LABOR...

Final regulations from the US Department of Labor issued in May will raise the minimum salary level for most overtime-exempt employees to \$47,476 per year (\$913 per week) from the current \$23,660 per year (\$455 per week) (effective December 1)

AND FROM THE STATE...

1. we learned that all PHAs that retained their eminent domain status are now required to report annually on the Comptroller's Website by February 1 of each year. They want to know if you have used your power and if so, for what.

2. And the big one was the open carry law which became effective January 1. There was an uproar over it for awhile but as it turns out, for most of us, it was kind of like Y2K--much ado about nothing. Here is what we learned about how it affects PHAs

- PHAs will not be able to prohibit open carry in any of their offices (main, management, or otherwise) unless they have an exception – two exceptions that MIGHT apply are if the PHA has an educational institution operating on site (like a community college offering classes on a regular basis or leasing space for classes) OR a daycare facility on site
- PHAs must immediately remove all signs prohibiting carrying (historically known as the 30.06 sign) or potentially be subject to fines (and there are websites set up for individuals to register complaints against entities posting signs illegally, i.e., is the entity allowed to post a sign and if so, is the wording what is required by law.
- PHAs can't restrict their licensed residents from carrying on any public areas of the properties like playgrounds, parks, parking lots – basically the residents have the same rights as every other person with a license to carry in public now.
- PHAs CAN restrict carrying in their board meetings (because they are subject to the Open Meetings Act) To do so, they must provide announcement to that effect, either by having the language as part of their publicly-posted meeting notice or a sign that can be posted/displayed by the door to the board meeting. The law prescribes the language and format to be used.