

Regulatory Relief for Housing Agencies Converting to Asset Management

By Melissa Worden
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Background and Overview - HUD recently published a notice creating a process for housing agencies ("HA's") to seek waivers from burdensome regulations. HA's with more than 250 units may seek waivers under the Notice. To obtain a waiver, an HA needs to show that the regulation:

- is not required by statute, and
- is uniquely different than rules that apply to other federal housing programs.

The Notice says that HUD will approve or disapprove the waiver request within thirty (30) days of receipt of a complete submission package.

Waiver Request Process- All requests are to go via email to HUD's electronic processing system to
PH_Asset_Management_Expedited_Waiver_Process@hud.gov.

The email waiver request must contain the following information:

1. The regulation(s) the HA seeks to be waived;
2. A board resolution authorizing the waiver(s) to be sought;
3. Justification and good cause for seeking the waiver(s), including how waiving the regulations would facilitate the HA's conversion to asset-based management; and,
4. A certification that the HA will revise its policies and procedures as necessary to reflect relief from the waived regulation(s), including complying with all public notice and comment requirements, prior to implementation of the revised policies or procedures.

Examples of Possible Waiver Requests- The Notice includes three examples of relief that could be sought:

Example 1 – Annual Resident Surveys. The first example is the potential waiver of 24 CFR 902.60(d) which requires, as part of the Public Housing Assessment System ("PHAS"), that HA's conduct annual resident surveys and provide a certification regarding collection of various operating data. For good cause, HUD will waive the requirement that HA's conduct resident satisfaction surveys or board certifications that certain data was collected. While HUD will not waive the other PHAS indicators, the physical and financial condition assessments, the requirements for those indicators are expected to change soon as PHAS is overhauled to be more consistent with property assessment criteria for assisted housing.

Example 2 – Alternative Inspection Standards. The second example in the Notice is the potential waiver of 24 CFR 902.43(a)(4) which requires HA’s to conduct annual inspections in accordance with Uniform Physical Condition Standards (“UPCS”). HUD will entertain waiver requests that suggest alternative measures for inspections, such as in accordance with state or local standards, as long as those standards meet or exceed the UPCS.

Example 3 – Tenant Participation Standards. HUD’s third example of the types of regulations for which waivers can be sought is 24 CFR Part 964, which covers tenant participation. HUD will consider waivers of regulations relating to the role of the HA-wide resident council, membership requirements, the contents of resident council bylaws and election procedures for resident councils, as well as other resident participation regulations. HUD appears willing to consider HA’s need the flexibility to develop tenant participation standards that work for their residents, as opposed to being forced to comply with standards imposed from DC.

The Notice is a good first step to provide HAs with a breather from cumbersome requirements. We would be happy to discuss the Notice and creative ideas for waiver requests with you.

Please call or email any of the Reno & Cavanaugh attorneys below to discuss the Notice.

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