

# APPENDIX H

## Changing Public Housing's Regulatory Environment

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This appendix includes suggested changes in public housing's "unique" regulatory requirements that would make the regulations either more uniform with assisted housing or simply more workable. These suggested changes include a mix of both prescriptive and descriptive measures.

### **Pet Rule**

The decision to allow pets in family housing should be a local one, not something dictated nationally. Still, if one must have a family pet rule for public housing, this is a good one. It provides enormous latitude to adopt pet rules that are consistent with those types of market rate and assisted housing properties that allow pets.

### **Cooperation Agreement**

Establishing strong working relationships with local welfare agencies is good practice. Legislating to that effect, however, inevitably results in a focus on process. While none of the agencies in the case studies indicated that this regulation was burdensome, the regulation appeared not to add any value and these so-called cooperation agreements were vague and insubstantial. HUD should encourage PHAs to seek strong relationships, but it seems silly to provide evidence of such in the absence of meaningful tenant data sharing arrangements at the federal level between departments.

### **Grievances**

Given that residents have the right to present their case before a court in any eviction action, there should be no reason to require public housing to have a unique grievance procedure – unique from for-profit and non-profit operators of assisted housing. The establishment of a formal grievance procedure should be a local decision.

In the absence of any change in regulation, it would be helpful for HUD to clarify that PHAs are not required to conduct semi-judicial hearings, which have cost consequences.

### **Deconcentration**

As noted, few agencies reported this regulation as anything but a minor cost and few had properties that fell outside the range. A possible change in this regulation would be one where PHAs certify each year, as part of their receipt of funds, that they are in compliance with Fair Housing regulations, including the avoidance of any practices that steer higher and lower income groups to different sets of properties.

### **Rent Rules**

Again, there appears to be no reason why public housing would have rent rules that are distinct from assisted housing. PHAs could be allowed to institute these provisions at their discretion if they found them worthwhile, but they would not be reimbursed for their costs. On the other hand, if these unique requirements were to remain, much could be done to clarify them and to make their tracking as simple as possible.

### **Section 3**

Given that that the federal small purchase threshold has been raised to \$100,000, a similar threshold should apply to Section 3. In other words, Section 3 provisions would only apply when ordering goods/services in excess of \$100,000. Alternately, Section 3 could be waived for smaller PHAs (and mostly does not apply in practice given how few contracts smaller agencies issue).

HUD could also do more to clarify the fact that Section 3 is a goal and not a quota system and to clarify what constitutes “reasonable efforts.” HUD has developed an annual reporting format on Section 3 that is fairly straight-forward, although few agencies appear to be aware of it.

### **Procurement**

At \$100,000, the federal small purchase threshold results in few procurements for the vast majority of agencies that ever exceed this amount in the operating budget. Most of the “cost” of procurement lies in local practice, where PHAs either choose to adopt lower thresholds (or are required by state to utilize lower thresholds) or establish centralized purchasing arrangements. Some PHAs also reference the burden of getting board approval for purchases. However, there is nothing in the federal regulations requiring that boards approve any purchases. While a PHA must have a board-approved procurement policy, that policy may allow for the executive director, or designee, to execute all contracts in accordance with such policies (practiced by at least one of the case study agencies).

A number of agencies have begun to explore ways of advertising their procurements over the internet, which could result in reduced advertising and other administrative costs (for example, a bid can be “posted” and not need to be reproduced). It would be helpful for HUD to find ways to allow PHAs to satisfy their public advertising requirements via the internet.

### **Wage Rates**

HUD-determined wage rates for maintenance staff is the only area of a PHA’s operating program where HUD regulates compensation levels. However, there was no instance where a case study agency paid higher wages as a result of the HUD-determined rates. PHAs either had collective bargaining, which set the HUD-determined rate, or the PHA established rates on its own that were higher.

None of the agencies indicated that the process of obtaining HUD-determined wage rates was burdensome (it was either available through the internet or HUD supplied the agency with the appropriate levels). Where this regulation could be burdensome would be if a PHA is contracting for maintenance services (lawn care, janitorial, extraordinary repairs, etc.) and was required to conduct wage monitoring surveys. Existing guidance on this rule is unclear whether such surveys are necessary and one case study agency was observed to include such surveys as part of its contract monitoring.

A general lack of understanding of the HUD-determined wage rule exists. In addition to greater clarity, this regulation would also benefit from the same threshold as applies to formal purchase procedures, i.e., any contract over \$100,000. Also, to the extent that wage monitoring is required (current guidance seems ambiguous), the rules should be sensitive to the differences between property management service contracts and capital construction contracts. Unlike, say, a comprehensive modernization contract, where laborers are present on-site for many months, and where it is not unreasonable to ask for weekly certified payrolls, it would be impractical to request certified payrolls for small and episodic service contracts.

### **Annual Unit Inspections**

Conducting annual unit inspections is good property management practice. About half of the case study agencies, however, reported that the requirement to conduct annual unit inspections using the new UPCS inspection forms added between 15-45 minutes per inspection. Some PHAs have now contracted with private vendors for these inspections, at a cost of around \$1 PUM. Where “repairs are required,” PHAs must then issue work orders for those repairs, the response times on which get tracked under the work order sub-indicator under the Management Operations component of PHAS.

Assisted operators are not required to conduct annual unit inspections (most do anyway, but not necessarily using UPCS). The fact that REAC conducts annual inspections (less frequently for PHAs that score high marks) of a sample of units seems appropriate and sufficient. In assisted housing, operators are not scored based on whether they conducted their own inspections and then issued and track work orders from those inspections; rather, they are measured by the results of HUD’s REAC inspection. While it seems appropriate that PHAs should conduct annual unit inspections, more leeway should be provided in how they conduct those inspections, provided their properties are maintained in good condition, as evidenced through REAC inspections.

### **Annual Plan**

To some agencies, preparing the Annual Plan is now a routine matter. To others, it is a modest cost driver. Planning, in general, is good practice. Few, however, seem to obtain much value from the PHA Annual Plan. At best, PHAs find it useful to fold into one process a myriad of changes in policy that might require public notice and comment.

Indeed, the Annual Plan is a checklist (or template) that does little to truly educate the public. It also asks the PHA to include data that is already contained in an agency's Admissions Policy and other public documents. Moreover, it still fails to indicate what a PHA actually intends to spend (budget) on any particular property, which, clearly, is an overriding theme throughout this report.

There are three levels of changes that could occur to the Annual Plan that would make it both less burdensome and more effective.

- Without a fundamental change, the Annual Plan document could benefit from a fresh look. Much of the data requested is already contained in an agency's existing policies; the plan should not require PHAs to repeat information that is already publicly available. Similarly, the document presumes that PHAs have a large role in effecting housing policy in their communities by asking them to assess/address larger housing needs. While some happen to perform that role officially (and get paid to do that), most do not and should not be asked to play that role through the reporting process of the Annual Plan. It is only when a PHA is deciding to change its stock that it should be asked if those changes are consistent with local housing affordability strategies.
- Moving up from a modification of the Annual Plan in its current context, HUD could next require PHAs to prepare annual plans but not prescribe a format. It could leave both the format itself and the public process to each PHA to determine what best serves its needs. This change would make it easier for PHAs to combine the HUD Annual Plan requirements with their own annual strategic planning efforts.
- As a more fundamental replacement of the Annual Plan, HUD could require each PHA to prepare an operating budget for each public housing property. True, site-specific operating budgets would be far more beneficial planning devices, as well as public educational tools, than the current Annual Plan template. In fact, for private operators of assisted housing, the budget preparation process is the "plan" that is prepared for each property.

## PHAS

The only "burdens" that PHAs reported with respect to PHAS were, in increasing levels of consequence, the Financial Data Schedule, the Resident Survey, and Work Order Reporting.

- **Financial Data Schedule (FDS).** Only two of the agencies reported anything above modest efforts to prepare the FDS. GSD did not find that the FDS was burdensome. Rather, GSD's objection is that the PHAS system, again, looks at the organization and not the properties. There is nothing in PHAS that asks a PHA to examine its operating costs on a property basis or whether its central

administrative costs are disproportionate to that of local operators of assisted housing.

- **Resident Survey.** Some PHAs noted that they went to extra lengths to inform residents about the upcoming survey. GSD's position on this issue is that such actions are a local choice, not a federal one. Some PHAs further indicated that, when they scored low on survey results, they were required to respond to those low-survey results and address them in their next Annual Plan. Such policy seems only reasonable and does not supercede local decision-making (a PHA could say that it intends, for example, to make capital repairs in accordance with established priorities). Still, in its February 7, 2003, proposed rule outlining changes to PHAS, HUD indicates that it proposes to drop the PHA follow-up to low-survey results and rely instead simply on the survey. Such action would certainly eliminate some of the "disparity" issue. Of course, it would be fairer if HUD also conducted tenant surveys in assisted housing, which it has long indicated that it would.
- **Work Orders.** Relief from the work order requirement would be greatly eased if, in accordance with the discussion above, HUD eliminated the requirement that PHAs conduct annual unit inspections in accordance with UPCS and instead relied on their own inspections to measure performance. Indeed, if the physical inspection component were to predominate, HUD could also drop the entire scoring of work order response times, leaving that for a local matter.

### Tenant Participation Requirements

There are three distinct tenant participation mandates in public housing (although interrelated by virtue of HUD regulations): 1) A Resident Advisory Board (RAB) must be established and consulted in preparing the Annual Plan, 2) resident councils must be recognized when they are created by residents and follow procedures outlined in HUD regulations, and 3) PHA boards must include at least one resident. These regulations also provide for receipt of funding through a special add-on of \$25 PUY and that a council must be organized with certain by-law provisions established by HUD. None of this is required in assisted housing.

Well-run housing benefits from effective tenant participation. Unfortunately, in terms of establishing regulations to mandate that goal, effective tenant participation takes many forms and is not necessarily objectively observable. PHAs have conditions under which they must seek tenant comment. However, such conditions are not cause, by themselves, for any discernable difference in operations or costs. Moreover, public housing rules regarding tenant participation do not confer decision-making authority with residents, only the need for consultation. The required costs of supporting resident councils are limited to \$25 PUY under new HUD rules.

While not required by HUD rules, GSD has observed that good assisted housing operators also ask tenant advice when initiating major changes in housing management

policies. GSD believes that there are significant numbers of PHAs that feel it is their responsibility to help organize and sustain resident councils, and spend significant funds to that effect. Rarely would a private operator of assisted housing go to such lengths to organize a resident council. A private operator might typically invest in organizing residents in a more general sense— getting more residents to participate in after-school programs or social activities, etc.— but not in the formal processes of resident elections. In those PHAs in the case study where significant efforts were devoted to organizing resident groups, both the residents and the agency staff expressed frustration that more energies were dedicated to the organizing of the councils, and the holding of elections, than to the reasons for organizing the councils in the first place.

There are several possible approaches to reconsidering the mandated tenant participation system that PHAs operate under. Simplifying the regulations regarding resident council recognition and operations and giving more leeway to local options would be a start. For example, HUD’s requirement for uniform by-laws for resident councils as a condition of a council’s receipt of agency funds appears too constricting. These uniform by-laws, for example, require five elected board officers (president, vice-president, etc.). As some noted, it sometimes is difficult to find five members of a community who want to take on such formal requirements and titles. Another area of confusion is the overlap between mandatory Resident Advisory Boards and their specific and limited functions under the Annual Plan, and resident councils that are voluntary and more open ended and are created at the initiative of the residents themselves. GSD does not believe that there should be a mandated RAB for the Annual Plan. PHAs should be free to determine the most effective methods for public and resident participation in policy, funding, and management matters.

Similarly, PHAs should be allowed to establish their own requirements related to the “recognition” of resident councils. One of the non-profit agencies that GSD visited had extensive and quite genuine resident participation at nearly all of its properties. But they did not have formal resident councils, which the director saw as limiting and fraught with the prospect of creating petty jealousies. Their vision of resident participation was more open, less constraining, and, ultimately, more effective than evidenced in some other PHAs with much greater emphasis on strict adherence to the HUD recognition policy.

### **Waiting Lists**

The 1998 QHWRA eliminated the previous requirement for centralized waiting lists. Somewhat surprisingly, few PHAs have adopted site-based or development-choice waiting lists (none of the case study agencies and few in public housing nationally). In implementing this new flexibility allowed under QHWRA, HUD has indicated that PHAs must provide information to applications on services, amenities, and waiting list times for all properties and must also provide for independent testing once every three years. It is difficult to determine whether these provisions are burdensome in that GSD found no case study PHA to have implemented site-based waiting lists. (As noted earlier, GSD has been in contact with a large agency in the mid-west that has implemented site-based waiting lists – there is no central application office – and has not found the “special” rules

burdensome, although the program has not been in effect for a full three years and, hence, has not needed yet to conduct the independent testing.)

### **Young-Disabled**

Among all the “unique” regulations, this one was the most difficult to estimate the cost impact. There were some agencies where no costs were observed in serving a mixed-population building and others where costs were evident. It is also less clear that this regulation is distinctly different than assisted housing, given that PHAs can apply for senior-only designation (and yet few agencies appear to have taken advantage of this avenue).

In assisted housing, owners essentially have the authority to admit not more than 10% young-disabled (they do not need HUD permission). This approach seems sensible. Thus, PHAs could either apply for making their buildings entirely senior-only or they could simply be permitted to limit them to not more than 10% of admissions without HUD approval.

Beyond that, there are certain buildings today that clearly serve a population of residents whose needs cannot be met with resources traditionally spent to manage the property. Sometimes, these buildings require additional social services; other times they may also require added security or maintenance services or management services. In keeping with earlier recommendations, GSD finds it appropriate that these buildings, at a minimum, should receive the co-efficient of a “family” property (a 6% difference, all other variables held constant).

There is also a class of public housing elderly buildings – mostly high-rise buildings with efficiency-type apartments in relatively soft rental markets – that have, unofficially, become young-disabled properties. This is less a regulatory problem as it is a market problem. For these properties, more deliberate consideration should be given to their future use, including disposition, redesign, or conversion to some form of service-enriched housing.

### **14-Day Notice of Non-Payment of Rent**

PHAs are required to send residents a 14-day notice in the event of non-payment of rent. There is no such requirement in assisted housing, although assisted housing operators must provide in all eviction notices language indicating that residents have 10 days to request a formal hearing. GSD took the position that this regulation was “substantially” the same. The concern of some PHAs is that, if they were to wait until, say, the 10<sup>th</sup> or 15<sup>th</sup> of the month to issue their late notices, and if they must wait 14 days (plus, in some states, “mailing days”), there may not be enough time to get a court date within the same month. GSD’s initial response was that PHAs could move their late-notice date back earlier in the month. While certainly that could work, it would, once again, override local decision making. A PHA should be able to establish the date for sending late notices, not

encumbered by the need to squeeze in the 14-day requirement. On these grounds, the 10-day rule in assisted housing should be adopted.

### **Information Technology**

While there is little in the way of formal federal requirements driving higher public housing IT spending, HUD could play a leadership role in helping PHAs to adopt, in terms of costs, more reasonable IT solutions. A special HUD/industry task force might be a productive start.