



U.S. Department of Housing and Urban Development

Seattle Regional Office
Seattle Federal Office Building
Office of Public Housing
909 First Avenue, Suite 360
Seattle, WA 98104-1000

December 10, 2009

PHA CIRCULAR

ATTENTION: ALL PUBLIC HOUSING AGENCIES (PHAs) IN REGION X

NO. 09-03

SUBJECT: PHA RESPONSIBILITY TO NOTIFY HUD OF LITIGATION

APPLIES TO:

LIPH
SECTION 8

NOTE: Forms, Handbooks, Notices, and other directives issued by HUD Headquarters may be ordered by calling 1.800.767.7468, or online at <http://www.hud.gov/offices/adm/hudclips/>

This PHA Circular is issued to remind HUD Assistance Recipients of the reporting requirements as outlined in HUD Litigation Handbook 1530.1, Rev. 5, Chap. 5. Recipients are reminded to notify the HUD Regional Counsel they are engaged in litigation involving any of the following:

- (1) Construction or application of: a Federal or State constitution, statute or regulation, a HUD assistance contract, or a cooperation agreement; or
- (2) If an adverse judgment would be satisfied from funds obtained at any time from HUD.

Initial notification should include a copy of the complaint, a summary of the matter, the nature of the involvement, and the venue of the action. Notifications should be sent to **Mona Fandel, HUD Regional Counsel, 909 1st Ave., Ste 260, Seattle, WA 98104**, immediately upon knowledge of the involvement. Prompt reporting will expedite HUD's required concurrence.

Recipients are further reminded that the HUD Regional Counsel's concurrence is required in connection with the initiation of litigation, an appeal from an adverse judgment or a litigation settlement involving a Public Housing Authority's HUD-funded program, project or activity receiving HUD funding. Concurrence is also required for procurement of private litigation services expected to exceed \$100,000. **This concurrence requirement excludes routine eviction actions and litigation involving a PHA in the Section 8 program.**

HUD ensures that PHAs retain appropriate discretion regarding litigation activities by requiring the HUD Regional Counsel to concur in a PHA's request for approval of affirmative litigation, or filing of an appeal, unless the action is found to be frivolous as a matter of law, against HUD policy, or not cost-beneficial.

For your convenience, a copy of HUD Litigation Handbook 1530.1, Rev. 5, Chap. 5 dated May 18, 2004, is enclosed. Questions regarding these reporting requirements should be addressed to Erika Hall, Attorney, Seattle Office of Regional Counsel, (206) 220-5401.

Sincerely,

//signed//

Harlan Stewart

Director

Office of Public Housing

Enclosure

cc: Mona Fandel, Regional Counsel, OAC
Erika Hall, Associate Field Counsel, OAC
Joy Biedermann, Chief Counsel, OCC
Donald Miller, Chief Counsel, OEC
Joy McCray, Program Center Coordinator, OEPH

CHAPTER 5. RESPONSIBILITIES OF HUD ASSISTANCE RECIPIENTS

5-1. INTRODUCTION

a. FUNCTION OF CHAPTER

This Chapter describes the responsibilities of all HUD Assistance Recipients in reporting and conducting Litigation or Threatened Litigation involving a program, project, or activity receiving such assistance.

b. CONDUCT OF LITIGATION

Every HUD Assistance Recipient has the responsibility to initiate or defend diligently all litigation involving such program, project, or activity to insure the proper use of federal funds.

5-2. SCOPE OF REPORTING REQUIREMENT

a. INITIAL NOTIFICATION

Every HUD Assistance Recipient that is engaged in Litigation shall promptly send a copy of the Complaint to the Regional Counsel if the Litigation involves the following:

- (1) Construction or application of: a Federal, or State constitution, statute, or regulation, a HUD assistance contract, or a cooperation agreement; or
- (2) If an adverse judgment would be satisfied from funds obtained at any time from HUD.

Every HUD Assistance Recipient who is threatened with such Litigation shall promptly notify the Regional Counsel of the name, title and address of the complainant, the nature of the complaint, and a factual statement of the Recipient's involvement in the subject of the complaint.

Notification of HUD at the earliest opportunity concerning any proposed, Threatened or Pending Litigation will considerably facilitate the timely processing of a PHA's requests for required HUD concurrences (see Section 5-3 below).

b. SUBSEQUENT REPORTING

Thereafter, the Recipient shall transmit to the Regional Counsel one copy of such documents as Regional Counsel may request.

Although the Recipient is responsible for the proper conduct of the Litigation, it

may request specific advice or assistance of the Regional Counsel. It may also submit proposed pleadings or briefs for evaluation and comment and may request citations to applicable law on specific questions.

5-3. LIMITATIONS ON LITIGATION ACTIVITY

With the exception of litigation involving a PHA in the section 8 program, the following additional requirements apply to Litigation involving a PHA program project, or activity receiving loan, grant, or subsidy assistance from HUD:

a. INITIATION OF LITIGATION BY PUBLIC HOUSING AGENCY

A PHA shall not initiate litigation, other than routine eviction actions, without obtaining the prior written concurrence of HUD. The PHA shall communicate in writing any proposal to institute such litigation to the Regional Counsel together with the reasons for the proposed action. The Regional Counsel shall concur unless he/she finds that such action would be frivolous as a matter of law, contrary to Departmental policy, or not cost-beneficial. See Section 3-3b(1).

b. APPEALS

The PHA shall not undertake an appeal from an adverse judgment without the prior written concurrence of HUD. At least 15 days before the last day for filing a notice of appeal, the PHA shall forward its written recommendation for or against an appeal to the Regional Counsel. The communication shall set forth the facts, the legal arguments, and other considerations upon which the recommendation is based. The last day to file a notice of appeal shall be clearly indicated. The Regional Counsel shall concur in such recommendation unless he/she finds that an appeal would be frivolous as a matter of law, contrary to Departmental policy, or not cost-beneficial. See Sections 3-3b(4) and 2-2f(2).

c. SETTLEMENTS

No settlement arising out of litigation shall be accepted by a PHA without the prior written concurrence of HUD. The terms of any such offer shall be communicated in writing to the Regional Counsel together with the recommendations of the PHA for disposition and the arguments in support of those recommendations.

If the opportunity for a settlement arises in the course of a trial, counsel for the PHA shall inform the court of these requirements, and, in an appropriate case, shall respectfully move for a continuance to allow for an opportunity to obtain HUD concurrence in the terms of the proposed settlement.

5-4. CONTRACTS WITH PRIVATE ATTORNEYS FOR LITIGATION SERVICES

With the exception of litigation involving a PHA in the section 8 program, a PHA must submit to HUD Regional Counsel for prior written concurrence any contract with a private attorney for litigation services involving a PHA program, project, or activity receiving loan, grant, or subsidy assistance from HUD. If the services are estimated to cost not more than \$100,000, this concurrence is not necessary. Such contracts shall make provision for reasonable fees and reimbursement of necessary expenses. If additional funding or a budget revision will be required to cover the cost of litigation services, the PHA shall consult appropriate Area and Regional Office staff. The requirements for approval of contact for litigation services are set out at Section 3-3b(3). Successive increases in such contracts in excess of the amounts described above require approval by the Regional Counsel, or Associate General Counsel for Assisted Housing and Community Development, respectively, as applicable.