August 2, 2017

Memorandum for: Lindsey S. Reames, PQ
Attention: Kimberly Wize, 5PH
From: Courtney Minor, Regional Counsel, SAC
Subject: Alexander County Housing Authority, Illinois Possible Structural Changes

We have reviewed your e-mail of July 19 raising questions about possible re-positioning of Alexander County Housing Authority ("ACHA") and its assets.

1. Does State of Illinois law currently allow for the formation of a Regional PHA which would have jurisdiction in Cairo/Alexander County?

State of Illinois law does allow for the formation of a Regional PHA. Both the State Constitution, at Article 7, Section 10 and the Intergovernmental Cooperation Act at 5 ILCS 220 et seq. allow for various governmental entities to cooperate with each other. In addition, 310 ILCS 10/30, the Housing Authorities Act, allows for joint exercise of powers. (copy of 310 ILCS 10/30 attached)

A Regional Housing Authority could be created in the southern portion of Illinois through intergovernmental agreements with the participating PHAs and other governmental bodies. As far as is known, there has never been a regional PHA in Illinois except for the Illinois Housing Development Authority, the state housing finance agency.

The Illinois Department of Commerce and Economic Opportunity ("IDCEO") previously administered the Section 8 certificate and the voucher program in counties that had no PHA. It is our understanding that Menard County Housing Authority, which also administers the Section 8 for ACHA and the issuance of vouchers for the relocation of ACHA tenants from McBride and Elmwood, has assumed that duty from IDCEO.

2. Is there a provision that would allow that PHA to operate in ACHA’s jurisdiction?
Pursuant to 310 ILCS 10/30, another PHA could operate in ACHA’s jurisdiction through a contractual arrangement with ACHA.

3. Can an out of state PHA operate in ACHA’s jurisdiction?

The Missouri Constitution at Article VI, Section 16 allows for municipalities or other political subdivisions to contract with other states or their municipalities and political subdivisions. Further, Missouri Revised Statutes-§70.220 “Political Subdivisions may cooperate with each other...” elaborates on cross-state agreements. The subject and purpose of the intergovernmental agreement or cooperative action shall be within the scope of the powers of the Missouri entity. Pursuant to Missouri Revised Statutes-§Municipal Housing allows for the creation of Housing Authorities and for the provision of safe or sanitary dwellings for persons of low income.

The State of Kentucky allows for public agencies to cooperate with other public agencies and “jointly with any public agency of any other state of the United States to the extent that the laws of the United States permit such joint exercise of enjoyment. “This cooperation across state lines between public agencies is contingent upon the review and approval of the Kentucky Attorney General. The Kentucky Revised Statutes do allow for the creation of public housing authorities.

4. Can the ACHA dispose of its assets to another PHA?

A. Property (Real Estate)

ACHA may request HUD’s disposition approval under Section 18 of the United States Housing Act of 1937 (the Act) for a sale or transfer of public housing property or other land, the requirements for which are included under 24 CFR part 970. ACHA would need to determine that the disposition is appropriate for reasons that are:

(1) In the best interests of the residents and ACHA; consistent with the goals of ACHA and its PHA plan; and consistent with the Act; or
(2) For property, other than dwelling units, the property is excess to the needs of the public housing project or the disposition is incidental to, or does not interfere with, continued operation of a public housing project.

ACHA must dispose of the property for not less than fair market value (in which case there is no showing of commensurate public benefit required), unless HUD authorizes negotiated sale for reasons found to be in the best interest of ACHA or the federal government; or dispose of property for sale for less than fair market value (where permitted by state law), based on commensurate public benefits to the community, ACHA or the federal government justifying such an exception.

Unless waived by the Secretary for good cause, net proceeds from any disposition must be
used to retire outstanding obligations issued to finance the original public housing project or modernization of the project. Any remaining proceeds must then be used for:

(1) The provision of low-income housing (as defined in the Act to mean dwellings assisted under the Act (public housing, section 8 housing, and homeownership programs assisted under the Act);
(2) The benefit of the residents of ACHA; or
(3) Leveraging amounts for securing commercial enterprises, on-site public housing projects of the ACHA, appropriate to serve the needs of the residents.

ACHA must make the request for a disposition to the HUD Special Applications Center.

The disposition of assets with authorization of the Special Applications Center and the general PHA disposition procedures can be accomplished.

B. Equipment

Pursuant to PIH 2008-17 (HA) Guidance on Disposition of Excess Equipment and Non-Dwelling Real Property under Asset Management, PHAs should comply with 2 part CFR 312. Specifically, when original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
(2) Items of equipment with a current per-unit fair market value more than $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency’s share of the equipment.

Accordingly, for per unit items with fair market values of less than $5,000 where the PHA deems the equipment no longer needed for the operation of projects, the PHA may retain the equipment as non-program assets. The PHA should keep appropriate supporting documentation.

For per unit items with fair market values more than $5,000, the PHA can either reimburse HUD pursuant to 2 CFR part 312, or the PHA may request an exemption from these requirements for good cause. The PHA should include good cause for all such exceptions. The exception request package shall include a board resolution which authorizes the disposition or reassignment of the equipment and includes the fair market value of the equipment, as well as any other supporting documentation necessary. This request shall be forwarded by the PHA to the local Public Housing Field Office Director who will then forward the package to Headquarters for approval.
5. Are there other provisions related to processes for dissolving a PHA that we should be aware of?

310 ILCS 10/32. Dissolution of Authority. As applies to ACHA, the statute envisions the commissioners of the ACHA adopting a resolution that is submitted to the governing body, in this case, the Alexander County Board of Commissioners. If the Alexander County Board of Commissioners concur and adopt their own resolution, then both (the ACHA and Alexander County) resolutions are submitted to the Illinois Department of Commerce and Economic Opportunity for approval. (copy of 310 ILCS 10/32 attached)

If the Alexander County Board of Commissioners does not concur with dissolution, it is possible for the ACHA Board of Commissioners to authorize entering Intergovernmental Agreements with other PHAs for administration of the public housing program in Alexander County and ACHA would continue to exist as an empty shell with no assets.

If you require further information, please do not hesitate to contact me at (312) 913-8615 or Deputy Regional Counsel Jan Elson at (312) 913-8604.
(310 ILCS 10/30) (from Ch. 67 1/2, par. 27c)

Sec. 30. Housing authorities may jointly exercise any or all of the powers conferred on such housing authorities, for the purpose of financing, planning, undertaking, constructing or operating a housing project or projects located within the "area of operation" of any one or more of such housing authorities; and may with respect to each other exercise any powers enumerated in "An Act in relation to aid of housing projects and cooperation with housing authorities and the Federal government by municipal corporations, political subdivisions and other public bodies of this State", filed July 13, 1937, as amended, in addition to powers conferred by this Act.

A housing authority may operate outside of its area of operation (1) by contract with another housing authority, or (2) by contract with a state public body not within the area of operation of another housing authority, if the Department shall first have found a shortage of safe or sanitary dwellings within the area of such State public body, in the manner provided by Section 3 of this Act, and shall have issued a certificate to this effect to such housing authority and to such State public body.

(Source: P.A. 81-1509.)
Sec. 32. An Authority created pursuant to this Act may be dissolved and its corporate status terminated in the following manner: whenever the commissioners of an Authority adopt a resolution to the effect that it has completed all projects undertaken by it, or that it has undertaken no project and has no project in contemplation, and that it has no other duties to perform in its area of operation, it shall submit a certified copy thereof to the governing body of the area of operation for which it was initially created. If the governing body concurs therein, it shall adopt an ordinance or resolution in support thereof and transmit a certified copy thereof, together with the certified copy of the resolution of the Authority, to the Department. The Department shall audit the financial records of the Authority and if the Authority has not been the recipient of funds from the State of Illinois, or if it has received such funds and fully expended the same in the exercise of its statutory powers, and if no judicial action is then pending in which the Authority, or the Commissioners thereof in their official capacity, is a party, and if the Authority is not a party to any unexecuted contract or agreement, oral or written, in which a monetary claim may be asserted against it by any person, firm or corporation, it shall issue a Certificate of Dissolution, attested by the Director of the Department, and file the same for record in the office of the recorder in the county in which the Authority is located.

If the Authority has in its possession or title public funds which are or have been derived from grants made by the State of Illinois, or any real or personal property acquired by such state funds, and if no judicial action is pending or contractual claims outstanding against such Authority as above provided, the Department shall require the Authority to transfer such funds to it, and to sell and liquidate its interest in such real or personal property at a fair value to be fixed by the Department and pay the proceeds thereof to the Department. Upon compliance with such direction, the Department shall issue, and file for recording, a Certificate of Dissolution in the manner above provided.

An Authority shall be deemed legally dissolved upon the filing of the Certificate of Dissolution in the Office of the recorder as herein provided. Such dissolution shall not affect or impair the validity of any deed of conveyance theretofore executed and delivered by the Authority. The dissolution of an Authority shall not be a bar to the establishment of a new Authority for the same area of operation in the manner provided by Section 3 of this Act.

(Source: P.A. 99-576, eff. 7-15-16.)
§ 970.17 Specific criteria for HUD approval of disposition requests.

In addition to other applicable requirements of this part, HUD will approve a request for disposition by sale or other transfer of a public housing project or other real property if the PHA certifies that the retention of the property is not in the best interests of the residents or the PHA for at least one of the following reasons, unless information available to HUD is inconsistent with the certification:

(a) Conditions in the area surrounding the project (density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the PHA;

(b) Disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing developments;

(c) The PHA has otherwise determined the disposition to be appropriate for reasons that are consistent with the goals of the PHA and the PHA Plan and that are otherwise consistent with the Act;

(d) In the case of disposition of property other than dwelling units (community facilities or vacant land), the PHA certifies that:

(1) The non-dwelling facilities or land exceeds the needs of the development (after DOFA); or

(2) The disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the development.