

## HUD Public Housing Administrative Reform Initiative Supporting Materials for PHAs

**What are these handouts?** They summarize basic statutory requirements without the veneer of embedded practice, regulations, and HUD guidance. They are intended to help the focus groups consider possible streamlining of administrative requirements while keeping the fundamental statutory requirements in mind.

The summaries are not comprehensive, but they do describe the key elements of applicable law for each focus group area. They can help participants focus on statutory requirements that HUD cannot waive without legislation. HUD has the authority to change everything else.

**Maximum PHA flexibility is the goal of administrative reform.** Streamlining administrative requirements is consistent with the stated goals of the U.S. Housing Act of 1937 –

*“the policy of the United States to vest in public housing agencies that perform well, the maximum amount of responsibility and flexibility in program administration, with appropriate accountability to public housing residents, localities, and the general public...” (Sec. 2(a)(1)(C))*

**Where do HUD requirements come from?** The public housing program is governed by three levels of Federal requirements: statutes, regulations, and other guidance.

- Statutes are the highest level of authority. They are the source for and supersede regulations and other guidance.
- Regulations impose binding obligations through authority delegated by Congress under 42 U.S.C. 3535(d). In turn, HUD must follow a public notice and comment process for a rule to have the force and effect of law (24 CFR Part 10).
- Other guidance, such as notices and handbooks, explain or interpret law and regulation. They are not legally binding because they have not been through the notice and comment process required for regulations.

**What power does HUD have to waive or change regulations?** Only Congress can alter a statutory requirement. However, HUD can change regulations and guidance. HUD can also waive regulations and guidance in specific cases based on a showing of “good cause”, a determination which is entirely within HUD’s discretion. (24 CFR 5.110) Therefore, regulations or guidance can be addressed by HUD without legislative change.

**Statutory changes require new law.** These summaries are designed to be a starting point for discussions about which program requirements HUD can or cannot address directly. If a requirement is not based in statute, then HUD can change it. If an administrative reform proposal is not consistent with current law, then legislative change is required to implement it.

## Public Housing Administrative Reform Structure Focus Group

### ACC, DOT and Structural Documents

**Background**— This Focus Group will discuss the Annual Contributions Contract (“ACC”), Declaration of Trust (DOT”) and other documents between HUD and a PHA. Unless otherwise noted the below summarizes the applicable statutes and not regulations or other guidelines.

**DOT Statutory Requirements**— Section 9(d). PHAs must enforce use restrictions on all property developed with public housing funds, although the length of restrictions depends on the use of funds:

- ❖ Development—40 years, starting at time of first occupancy, plus ten year tail
- ❖ Modernization—20 years, starting after most recent modernization is finished, plus ten-year tail

If both obligations apply, the latest period governs. HUD enforces this through a “declaration” that the property is “held in trust” for HUD for the term of the use restriction which is recorded on the property. Nothing in the statute provides for release of these use restrictions, other than through demolishing or disposing of property, at the end of the use period.

### ACC Statutory Requirements

**Required ACC Provisions** – Section 6(c). ACCs must contain the following:

- HUD may determine that changed circumstances in the locality demand that the PHA review and revise its income limits
- PHA must annually determine and certify that all residents meet the established income limits
- PHA must notify all applicants of their eligibility for admission.
  - Ineligible applicants - PHA must provide specific grounds of ineligibility and an informal hearing, if requested by applicant.
  - Eligible applicants - PHA must inform eligible applicants of eligibility and approximate date of occupancy.
- PHA must comply with HUD regulations and requirements designed to promote sound management practices including requirements relating to:
  - Admission preferences
  - Rent collection
  - Tenant-management relationships
  - Homeownership opportunities
  - Accounting systems for rent collections and operating costs
  - Compliance with lead based paint requirements
- All public housing property must be exempt from state and local taxes (unless qualify for the election under Section 35(f))

**Contributions and Contributions Contract – Section 5.**

- Annual contributions shall be memorialized in a contract (an “ACC”).
- An ACC may cover one or more public housing properties. If it covers multiple properties, it may treat them collectively as one project.
- HUD may not execute an ACC for a new project unless the PHA has notified the chief executive office of the locality of such use and provided information reasonably requested by the locality.
- HUD and the PHA may amend or supersede an ACC by mutual agreement.

*These summaries were prepared by Reno & Cavanaugh, PLLC on behalf of Housing Authority Insurance Group. These are general summaries of the law and are by no means comprehensive and should not be relied upon as such. Particularly, these summaries do not take account any applicable state or local laws.*