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Regulations Division
Office of the General Counsel
Rules Docket Clerk
U.S. Department of Housing & Urban Development
451 Seventh Street SW. Room 10276
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RE: Comments on Interim HUD Rule on Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remediating Substantial Default; and Related Scoring Notices
24 CFR Parts 901, 902 and 907
Docket Nos. FR-5094-I-02 (RIN 2577-AC68); FR-5094-N-03 to 06; 5487-N-03
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The Saint Paul Public Housing Agency (PHA) submits the following comments regarding the Department's Interim Rule and Scoring Notices on the Public Housing Assessment System (PHAS). We also join in the comments from the Public Housing Authorities Directors Association (PHADA).

The Saint Paul Public Housing Agency is an independent governmental agency that owns and manages over 4,200 public housing dwelling units and administers over 4000 Section 8 Housing Choice Vouchers in the City of Saint Paul, Minnesota. The PHA has been rated a "High Performer" agency every year under PHAS and PHMAP.

Relevant to our comments on the PHAS financial components, the Saint Paul PHA has been awarded a "Certificate of Achievement for Excellence in Financial Reporting" by the Government Finance Officers Association of the United States and Canada (GFOA) in each of the last five years. The Certificate of Achievement honoring the PHA's Comprehensive Annual Financial Reports (CAFRs) is the highest form of recognition in the area of governmental accounting and financial reporting.

We offer the following specific comments:

1. We support the simplification of PHAS that is embodied in the new interim rule. HUD has wisely condensed the scoring indicators and abandoned many of the problematic elements of the 2008 proposed rule.
2. However, the rule is unfair to HAs in that it changes rating standards retroactively. HAs with March 31 fiscal year ends (FYE) like Saint Paul will be scored on the new system for a year that is now over, when we had no notice before or during the year of how the



new system would work. HAs should be given advance notice on any new rating system, preferably 12 months from the publication of the rule before they are evaluated. We recommend that HAs have the option of having their first (and perhaps) second annual PHAS scores under the new rating system be considered “advisory” scores, if their rating would have been reduced due to changes in the new rule.

3. We applaud HUD’s decision not to score management performance on the basis of on-site management reviews. We believe HUD does not have the capacity to conduct such voluminous reviews, and many of the components were vague and/or subjective.
4. Occupancy should not be included in the Capital Fund indicator. It already receives 16 points in the Management indicator.
5. The occupancy rate threshold for maximum points should remain at 97% and not increase to 98%. Multifamily programs receive top scores for occupancy rates of 95% or higher. HUD consistently talks about merging these programs, yet public housing always seems to retain separate (and unequal) regulation and in this case, scoring.
6. We support the “3-2-1” schedule for physical inspections, which appropriately directs HUD and HA resources toward properties with more deficiencies. Properties scoring 90 and above, like many of Saint Paul’s properties, can be adequately monitored on a three year inspection cycle.
7. The Accounts Payable component does not belong in the assessment system as a stand-alone component.

Some of these comments are explained further below, along with our comments on other issues in the interim rule.

1. HUD should not impose retroactive scoring rules. Local housing agencies (HAs) are entitled to know the performance criteria on which they will be graded before the grading period begins, so they have an opportunity to adjust their management practices as may be needed. As we wrote in our October 20, 2008 comments on the 2008 proposed rule, “HUD should not assess a housing authority’s performance using significantly changed standards, scoring or timing until the new rule has been in effect for at least a PHA’s full fiscal year.”
 - a. HAs must decide on the priorities for using their limited operating and capital funds in consultation with the residents. While it is HUD’s prerogative to influence those priorities by creating and modifying performance evaluation systems, after-the-fact changes in scoring criteria and weights can penalize agencies for performance that was acceptable under the previous rating system that was in effect during the period of performance.
 - b. Example: A 3/31 FYE housing agency may have averaged 97.4% occupancy during the fiscal year that just ended, relying on earning the maximum points under the previous scoring system, only to find out now that they lost points by not achieving 98%.

- c. Although the Saint Paul PHA consistently maintains occupancy above 99%, we understand that some other agencies may have legitimate reasons why they cannot produce similar results (local market conditions, building design and siting issues, etc.).
 - d. Changing PHAS standards can impair a HA's ability to achieve the High Performer rating, which is the basis for the statutory Capital Fund Program (CFP) bonus. That is a significant amount of money, and a powerful incentive. The new standards should be well understood before the rating period, for the incentive to have maximum impact on performance, and for all HAs to have a fair opportunity to earn the bonus.
2. On-Site Management Reviews. We applaud HUD's decision to abandon on-site management reviews as the basis for scoring management performance, which was a huge flaw in the 2008 proposed rule.

HUD Field Office staff, not contractors, should have discretion and flexibility to perform limited or comprehensive on-site management reviews when there are clear indications of operational problems at a HA, or (infrequently) for spot-checking compliance with selected requirements. The required annual audits of HAs by independent public auditors should be the primary method of monitoring compliance.

3. Accounts Payable should not be a standalone component in PHAS. By itself, Accounts Payable does not measure the financial performance of an agency. This appears to be micromanagement at its worst. Local agencies should be allowed to structure their accounts payable procedures in a way that best meets their local needs.
- a. In many cases, the payment of invoices is relegated to a central accounting function within the Central Operating Cost Center. Individual AMPs should not be graded on a function within the COCC.
 - b. The new interim rule incorrectly grades accounts payable as if all accruals are in fact due and payable, rather than the recording of a liability that by contract terms may not yet be payable. It seems that HUD is departing from GAAP in these instances. Some examples follow:
 - i. A large construction company performing major modernization work for the HA submits invoices on the 15th of every month for work done in the past 30 days (e.g., work done March 16th to April 15th). At fiscal year-end (March 31st), the HA would owe the contractor for one-half of a month's worth of work. The contractor will not be asking for payment for another 15 days. However, GAAP requires an accrual for all goods or services received through the end of the year. In this case, the average monthly invoice has been approximately \$250,000. After review of work performed from March 16th to March 31st by HA project staff, an accrual of \$238,450 is recorded. This work will not be billed by the contractor for another 15 days, but the HA needs to record a liability at fiscal year-end for \$238,450. This liability is not delinquent, nor should it be considered due to the

- contractor, or used for any other purpose other than to properly record the expense per GAAP.
- ii. The HA pays water bills for all of its units. (Retrofitting the units with individual check-meters would not be cost effective.) These water bills are invoiced quarterly, and scattered through all months. It may be that an invoice period covers March 5th through June 4th. At fiscal year-end (March 31st) an estimate of liability for 27 days (of a 91 day billing cycle) is calculated using an average quarterly billing amount. If the invoice is for \$180, an estimated \$60 dollars might be accrued. Compound this over 4,000 units (including large hi-rises) and in this example the HA may have \$60,000 accrued for water bills that are not yet due for payment, but are a required accrual by GAAP.
 - c. These examples illustrate why accounts payable accruals should not be used to evaluate performance. In the private sector, many companies delay paying their bills as long as possible, while still maintaining healthy relationships with the vendors and contractors. As long as bills are paid before any penalties or interest is charged, delaying payments maximizes cash flow and investments. The interim rule does not take into account the variations in how a HA's vendors do business. One vendor may freely allow payments beyond 30 days. Some vendors actually bill the HA before the services or goods are received. In this case, an agency may choose to pay 30 days after the delivery of service or goods, but it wouldn't be within 30 days of the invoice. HUD should not dictate how housing agencies handle day-to-day business, given the multitude of agencies with varying local policies, procedures and business relationships.
 - d. Other HA practices may cause invoice payments to appear late even when they are timely. For example, the Saint Paul PHA's fiscal year ends March 31, so staff routinely record invoices as "3/31" even though they are received in April. When the goods or services were received in March or earlier, this procedure keeps the expense recorded in the correct fiscal year. However, such an invoice might appear to have been paid late, when in fact it was paid in less than 30 days. This may be necessary due to the nature of software used by some HAs.
 - e. After the shift to asset-based budgeting and accounting, it is even more difficult to track "timely payment" of invoices by AMPs. In many HAs (Saint Paul PHA included), the payment of invoices is relegated to a central accounting function within the Central Operating Cost Center. As stated above, it would not be practical or fair to grade the AMPs on a function within the COCC. Many HAs and their computer systems (including Saint Paul PHA's) do not have the ability to track invoices by AMP, since the only designation in most accounts payable systems will be within the account code structure, especially if the invoice covers more than a single AMP. The Saint Paul PHA already has an extensive (and expensive) computer system in place that serves our business needs well, but it does not facilitate tracking payment of invoices by AMP. With insufficient funding for core operations, the PHA would not willingly pay more for custom programming to modify the system.

- f. As we wrote in our comments on the 2008 proposed rule, we encourage HUD to revise this indicator altogether or to eliminate it because it would not provide a useful performance measure of financial performance.

Recommendation: If HUD retains this indicator, a better standard for “A” performance would be: “98% of invoices (not in dispute) are 60 days or less outstanding.”

4. “Occupancy” should not be included in the Capital Fund indicator. It already receives 16 points in the management indicator. Although occupancy rates are an important measure of HA performance, the weight should not be compounded by including it in two different components.
5. The occupancy rate threshold for maximum points should remain at 97% and not increase to 98%. Properties subsidized through HUD’s Multifamily programs receive top scores for occupancy rates of 95% or higher. Under the new rule a HA with a 95% occupancy level in public housing receives only 8 out of 16 points, so their Management score can be no higher than 17 out of 25 points. The HA cannot receive High Performer status if their overall score is below 90 points or if their Management score is below 15 points. Losing 8 points for an occupancy rate of 95.4% is a disproportionately heavy penalty.
6. Timeline for Requesting Database Adjustments and Technical Reviews. We support HUD’s decision to extend the time periods for appeals to 30 days (up from 15 days) for a technical review and 45 days for a database adjustment (also up from 15 days). The longer time period will give HAs more opportunity to review all of the results from the inspection in question and determine whether an appeal is warranted, and to compare with other inspection results that may be posted around the same time. (We often find that successive inspections cite the same deficiencies, and we like to consolidate our appeal requests as much as possible.)
7. Physical inspection standards should be reduced to reasonable levels. HUD is not proposing to change the standards or protocols for PHAS-PASS physical inspections. However, we are repeating our earlier recommendations that HUD adjust (relax) the standards to match the statutory standard of providing “acceptable basic living conditions.” We continue to believe that the PHAS physical inspection standards are too stringent, far exceeding the statutory requirement. Some examples from past PHAS inspections in Saint Paul are described below.
 - a. The current system imposes a heavy point penalty on a fogged thermopane window in a hi-rise common area, even though the window keeps out the elements. In fact, the window may look no different than a dirty window, which is not a deficiency. It may be unsightly to some observers, but it meets the standard of “acceptable basic living conditions”. (The 8.2 point deduction inappropriately reduced the PASS score for this 144 unit hi-rise which is in good condition.)
 - b. At a different hi-rise building the inspector cited “blistering” of the membrane on the building’s roof, a “Level 3” deficiency resulting in a 9.3 point deduction.

The PHA requested a database adjustment or a technical review, explaining, “This hi-rise roof is still functional. The PHA had a professional evaluation of hi-rise roofs conducted a month before the PASS inspection. We provided a copy of the report, which said: ‘(Upper Roof) Reroofing recommended in 2-3 years.’ The roof was nearing end of its useful life and was due to be replaced with Capital Fund grants in the next few years. For a 425-unit row/townhouse and hi-rise development, deducting 9.3 points for this roof condition inappropriately reduced the PASS score.”

REAC rejected our request for a data base adjustment.

Unreasonably stringent inspection standards and arbitrarily heavy point deductions become even more important when HAs are underfunded. That can trigger more frequent inspections (annual inspections instead of every 2 or 3 years under the new rule) and jeopardize a HA’s High Performer status (risking loss of the Capital Fund bonus).

Inadequate HUD and PHA resources: At the present time and in the foreseeable future, HUD and individual housing agencies will not have sufficient resources to do everything we would like to do or everything that needs to be done to carry out our mission. Among other challenges, the shift to the operational model based on Asset Management Projects continues to consume inordinate amounts of staff time and agency resources for both HUD and PHA’s. During HUD’s Administrative Reform Initiative (ARI) meetings in 2007, the housing industry groups and individual HAs (including the Saint Paul PHA) strongly recommended that performance ratings be suspended or adjusted (upward) when housing agencies do not receive adequate funding. (“Oversight regimens must take the level of resources into account in final scoring and possible sanctions.”) One possible solution was PHADA’s recommendation to divide the operating subsidy proration factor into the nominal score to arrive at an adjusted score. (For example, an 80 nominal score on one component, divided by an 85% proration, would become a 94 adjusted score.)

Again, we support HUD’s simplification of PHAS that is embodied in the new interim rule. HUD has wisely condensed the scoring indicators and abandoned many of the problematic elements of the 2008 proposed rule. We also appreciate HUD’s clear explanations of the changes in the PowerPoint training presentations that accompanied the publication of the interim rule.

Thank you for the opportunity to submit these comments.



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JMG/FAH/RPM