

HUD Is Poised to Drastically Alter the PHA Plan Process

The Department of Housing and Urban Development (HUD) has taken action on several fronts to streamline the public housing authorities (PHA) plan process by revising and eviscerating the HUD required Template for the five-year and annual plans. As early as 2006, HUD announced that it wanted to streamline the regulations relating to annual plans.¹ More recently, in the context of asset management, HUD sought to streamline the PHA Plan process in the context of the Public Housing Administrative Reform Initiative. This article will review the steps that HUD is taking to modify the PHA plan process.

Background on the 5-year and Annual Plans

In 1998, Congress created the PHA five-year and annual plans in response to proposals to devolve the regulation of key elements of the public housing and voucher programs to local PHAs. Currently, any PHA that receives funds under the United States Housing Act must submit to HUD a five-year plan setting out both the agency's mission in serving low-income and very low-income families and the goals and objectives it will employ to meet those needs.² Any agency that receives money from HUD to manage a voucher program³ or operate PHA-owned public housing units⁴ must also submit, annually, a detailed description of its operations, programs, services and fiscal status.⁵

The purpose of the plan is to provide a framework for local accountability and a means by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.⁶

Local accountability is accomplished, in part, by the requirement that each PHA "establish one or more resident advisory boards" (RABs),⁷ which "shall assist and make recommendations regarding the development of the [plan]."⁸

In addition, PHA "shall consider the recommendations of the resident advisory boards in preparing the final . . . plan, and shall include, in the . . . plan submitted to the Secretary . . . , a copy of the recommendations and a description of the manner in which the recommendations were addressed."⁹ Local accountability is further supported by the requirement that any significant amendment or modification of a plan may only be made at a public meeting of the PHA board or equivalent body, with subsequent approval by the Secretary of HUD.¹⁰

To implement the statute, the Secretary promulgated a template for the five-year and annual plans.¹¹ Later the Secretary issued a streamlined template for use by high-performing PHAs,¹² small PHAs¹³ and PHAs that only administer the voucher program.¹⁴ All other PHAs are required to fill out the standard template for the five-year and annual plans.¹⁵ A PHA's annual plan submission to HUD includes the completed applicable template together with several specified attachments. Additionally, the PHA must identify and/or create and make available a number of supporting documents. The current standard template contains specific sections in which the agency must address seventeen of the nineteen statutorily required plan elements.¹⁶ The template presents numerous prompts, options, and suggestions for possible policies and programs among which a PHA can choose and to which it can add. It also includes requirements for individualized descriptions, addenda and supplements. These suggested options and opportunities are designed to assist PHA staff in thinking creatively and thoroughly about the scope of, and potential for, their program and to address those policy determinations that Congress devolved to the PHAs. It is also intended to facilitate resident and community understanding of, and constructive involvement in, the plan creation and implementation process.

⁹*Id.*

¹⁰*Id.* § 1437c-1 (g).

¹¹The Templates are issued in accordance with the authority to "establish . . . requirements for [the] form of submission, and for the contents of such plans." 42 U.S.C.A. § 1437c-1(c)(1); *See also* PHA Plans Streamlined Annual Version (Form HUD-500750SA) (4/30/2003) at <http://www.hud.gov/offices/pih/pha/templates/pdf/50075-sa.pdf>.

¹²42 U.S.C. § 1437c-1(k)(A) (West Supp. 2007).

¹³*Id.* § 1437c-1(k)(B), PHAs with less than 250 public housing units that have not been designated as troubled.

¹⁴*Id.* § 1437c-1(k)(C).

¹⁵PHA Plans: 5 Year Plan for Fiscal Years 2005-2009: Annual Plan for Fiscal Year 20__ (Form HUD 50075) (03/2006) at <http://www.hud.gov/offices/pih/pha/templates/pdf/phaplans.pdf>.

¹⁶The original statute contained seventeen elements and an "other" category. Pub. L. No. 109-162, Tit. VI, § 603, 119 Stat. 3040 (2006) added a requirement that the five-year plan (codified at 42 U.S.C.A. § 1437c-1(a)(2)) and annual plans (codified at 42 U.S.C.A. § 1437c-1(d)(13)) include statements and descriptions of how the authority plans to and has addressed issues of domestic violence, making the total nineteen. *See* <http://www.hud.gov/offices/pih/pha/templates/pdf/phaplans.pdf>. HUD has issued notices for PHAs explaining what must be done to comply with the Violence Against Woman Act obligations and the requirement to provide information regarding pets, the two items not addressed in the current template.

¹*See e.g.*, Semi Annual Regulatory Agenda, 71 Fed. Reg. 22,734, 22,738 (April 24, 2006); Semi Annual Regulatory Agenda, 71 Fed. Reg. 73,386, 73,388 (Dec. 11, 2006); Semi Annual Regulatory Agenda, 72 Fed. Reg. 22,676 (April 30, 2007).

²42 U.S.C.A. § 1437c-1(a) (West Supp. 2007).

³*Id.* § 1437f(o) (West 2003 and West Supp. 2007).

⁴*Id.* § 1437g.

⁵*Id.* § 1437c-1(b).

⁶72 Fed. Reg. 70,878 (Dec. 13, 2007).

⁷42 U.S.C.A. § 1437c-1 (e)(1) (West Supp. 2007).

⁸*Id.* § 1437c-1 (e)(2).

While the templates are, at first glance, mostly check-off-the-box forms, they are actually detailed road-maps to a myriad of fascinating destinations which illuminate both the broad boulevards and the back alleys of the PHA's fiefdom. The standard template will, for instance, disclose both the total number of units of housing managed by the PHA,¹⁷ whether the PHA seeks criminal history information from local, state or federal sources, and whether it shares any of that information with landlords.¹⁸ In addition, the attachments to both the streamlined and standard template contain detailed information about points of interest along the way. The "Required Attachments" list contains such things as the "Capital Fund Program Annual Statement,"¹⁹ while the "List of Supporting Documents . . ." includes the Administrative Plan for the voucher program and the Admission and Continued Occupancy Plan (ACOP). Both the Administrative plan and the ACOP contain many details for the administration of public housing and the voucher programs.²⁰ The standard template annual plan is a treasure trove of information which rightly belongs in the public domain, not in the castle keep.

Community activists and tenant advocates have counseled RABs, other participant groups, individuals and local stake-holders in the use of the plan process to influence both the creation of PHA policy and its implementation and enforcement.²¹

Dramatic Changes Proposed by HUD

HUD is poised to revise the PHA five-year and annual plan templates to drastically reduce their scope and to inhibit access to required and relevant information.

On August 22, 2006, HUD published a notice in the Federal Register announcing that it intended to eliminate the existing template forms (HUD 50075 SA and HUD 50075 SF) and have only a revised form HUD 50075 that would be used by all PHAs. That form would only have been ten pages rather than the existing forty-two pages.²² The notice provided a sixty-day comment period.²³

¹⁷PHA Plans 5 Year Plan for Fiscal Years 2005-2009 Annual Plan for Fiscal Year 20__ at 2 (Form HUD 50075) (03/2006) at <http://www.hud.gov/offices/pih/pha/templates/pdf/phaplans.pdf>.

¹⁸*Id.* at 23.

¹⁹*Id.* at 8.

²⁰*Id.* at 9.

²¹The Center for Community Change published a widely circulated *Resident's Guide to the New Public Housing Authority Plans*, June 1999. Copies are still available electronically at NHLP (Contact Andretta Harris at (510) 251-9400 Ext. 3108).

²²Notice of Proposed Information Collection for Public Comment: Public Housing Agency Plans, 71 Fed. Reg. 48,934, 48,935 (August 22, 2006).

²³The Paperwork Reduction Act (44 U.S.C.A. § 3501 et seq.) and OMB rules create a two-step process in which the agency proposing a new, revised, or renewed information collection publishes a notice which allows the public sixty days to comment to the agency. After taking comments into account, the agency submits the proposed collection to OMB and publishes a second Federal Register notice inviting comment to OMB for a thirty-day period.

On May 7, 2007, another notice in the Federal Register announced that a proposed new plan template had been submitted to the Office of Management and Budget (OMB) "for emergency review and approval" and that comments to the new template could be submitted to HUD by May 14, 2007.²⁴ The newly proposed annual template was one and one-half pages long with three pages of instructions.²⁵ Effectively, the proposed template constituted little more than a notice of which sections of the PHA plan the authority had changed from the previous year. The National Housing Law Project (NHLP) submitted comments, pointing out, in part, that there was no emergency warranting expedited review and that the quality, utility and clarity of the information would suffer to the point of being virtually useless.

On May 16, 2007, OMB issued an action notice approving HUD's May 7, 2007, request without change "due to Agency discretion."²⁶ OMB stated therein that the previous time burden for completing the PHA plan template was 64,466 hours and that the burden under the proposed form would be 52,698 hours²⁷ (a reduction of 18.25%).

On August 15, 2007, another Federal Register notice announced that a proposed "revision" of HUD forms 50075 and 50077²⁸ would be submitted to OMB and that comments on the revision were due by October 15, 2007. The proposed revised template²⁹ evidenced small changes from the May 2007 proposal, several of which responded to specific comments from NHLP.³⁰ There was, however, no recognition in this revision of the need to withdraw the proposed one-and-a-half-page template.

NHLP, the National Low Income Housing Coalition and the Housing Task Force of the Consortium for Citizens with Disabilities (CCD) all submitted comments stressing that the evisceration of the standard annual template would thwart congressional intent and statutory directive and make it much more difficult for resi-

²⁴Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Public Housing Agency Plan, 72 Fed. Reg. 25,770 (May 7, 2007), see NHLP, *Recent Housing-Related Regulations and Notices*, 37 HOUS. L. BULL. 122, 123 (June/July 2007).

²⁵HUD, 5-Year and Annual Plan at http://www.reginfo.gov/public/do/PRAICList?ref_nbr=200711-2577-001.

²⁶GSA, OMB, *View ICR - OIRA Conclusion*, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200705-2577-001#.

²⁷GSA, OMB, *View ICR - OIRA Conclusion*, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200705-2577-001#.

²⁸Notice of Proposed Information Collection for Public Comment: PHA Plans Standard Template, 72 Fed. Reg. 45,823 (August 15, 2007), see NHLP, *Recent Housing-Related Regulations and Notices*, 37 HOUS. L. BULL. 163, 165 (Sept. 2007).

²⁹GSA, OMB at http://www.reginfo.gov/public/do/PRAICList?ref_nbr=200711-2577-001.

³⁰*Id.* Including the inclusion of extremely low-income families (Section 5.2), identification of "all" PHA Plan elements rather than just the "required" elements (Section 6.0(a)), identification of the location of the entire plans rather than simply the "required PHA Plan elements not subject to HUD review" (Section 6.0(b)), and specific references to Section 3 and Family Self Sufficiency programs under the "Community Service and Self-Sufficiency" element (Section 6.0-7).

dents, participants and the public to know what is in the five-year and annual plans, understand the nuances of the inventory and fiscal status of the authority, anticipate demolition and disposition plans, identify and, thereafter, access supporting documents, exercise their responsibility and right to engage in the crafting of the plan and finally, to hold PHA officials responsible for its execution. The CCD focused on the impact of the proposed revisions on persons with disabilities. All three emphasized how the detailed template benefits local authorities by providing numerous prompts and options for possible PHA policy and programs and requiring individualized descriptions, addenda and supplements suggesting options and opportunities which assist PHA staff in thinking creatively and thoroughly about the scope of, and potential for, their program.

There are no reports that residents, their representatives or advocacy groups representing residents were involved in these discussions.

On November 20, 2007, a third Federal Register notice appeared,³¹ announcing that the proposed revised template had been submitted to OMB and that comments could be again submitted by December 20, 2007. Questions arose when the OMB and Information Collection Budget websites did not contain copies of the proposed template. Responding to protestations from CCD counsel, OMB issued a fourth notice, on December 13, 2007.³² This notice extended the comment period to December 31, 2007.³³ HUD continued to propose adoption of the truncated template. NHLP and CCD again submitted comments. Both argued that HUD lacked statutory or regulatory authority to change the template and that public housing program participants and the public, who were among the intended beneficiaries of the transparency and accountability promoted by the plan structure, would, in effect, be disenfranchised by the changes.

HUD has not posted the final template. Most recently it has reiterated that "the Department believes that the revised template significantly reduces the administrative burden associated with preparing Annual Plans (within statutory limits), while balancing the need for public

access." However, it appears committed to issuing a new template in the early part of 2008, which PHAs could begin to use for the July 2008 fiscal years.³⁴

Other Actions to Streamline the PHA Plan Process

HUD acknowledges that it began a process in late 2006 to discuss with PHAs and industry representatives areas for administrative streamlining.³⁵ There are no reports that residents, their representatives or advocacy groups representing residents were involved in these discussions. In the summer of 2007, HUD posted an announcement on its website to all PHAs that it was seeking volunteers for ten study areas identified by HUD for streamlining. Word of the announcement spread to resident groups and their advocates, and they signed up for the study groups, one of which was on the PHA plan process and the Capital fund. The PHA plan working group, unlike others, produced no minutes of its meetings or draft reports for posting on the HUD website.³⁶ However, it appears that the working group did discuss the PHA plan template and made recommendations regarding streamlining the capital fund.

Subsequent to the working group meetings, advocates have been informed that HUD has drafted new public housing rules that would amend the published rules regarding the PHA plan. Some of the critical changes include changes necessary to implement the revised template such as simplifying the information provided to residents and the public regarding available financial resources and eliminating significant guidance regarding the role and composition of the RABs. In addition, changes apparently may be proposed regarding the statement of housing needs and site-based waiting lists.

Conclusion

If HUD proceeds to adopt a new template and revised regulations, as it appears ready to do, resident and public participation in the PHA Plan process will be hampered severely. Information that has been heretofore available will no longer be easily accessible and it will be more difficult to influence the PHA plan process. Advocates are urged to monitor HUD's proposed actions and, when afforded an opportunity, should oppose the proposed changes. ■

³¹Notice of Submission of Proposed Information Collection to OMB; Public Housing 5-Year and Annual PHA Plan, 72 Fed. Reg. 65,344 (November 20, 2007); see NHLP, *Recent Housing-Related Regulations and Notices*, 37 Hous. L. Bull. 212, 214 (Nov./Dec. 2007).

³²Notice of Submission of Proposed Information Collection to OMB; Public Housing 5-Year and Annual PHA Plan; Correction, 72 Fed. Reg. 70,878 (December 13, 2007).

³³*Id.*

³⁴HUD, REAL ESTATE ASSESSMENT CENTER, PUBLIC HOUSING ADMINISTRATIVE REFORM INITIATIVE: INTERIM REPORT ON RECOMMENDATIONS (Nov. 30, 2007).

³⁵*Id.* at 1.

³⁶The HUD website for information about the Public housing Administrative Reform Initiative is <http://www.hud.gov/offices/pih/programs/ph/phari.cfm>.