

FLASH ALERT

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RELIEF FOR PHAS, “ECONOMIC, GROWTH, REGULATORY RELIEF, & CONSUMER PROTECTION ACT”

The Economic, Growth, Regulatory Relief, & Consumer Protection Act (PL 115-174) was recently enacted by Congress and signed by the President in May of 2018. This Act addressed many areas such as mortgage lending, regulatory relief for “community” banks, consumer protection, regulatory relief for large banks, and regulatory relief for capital formation. Section 209 of the Act updated some legislation for Public Housing Authorities (PHAs).

This Act provided relief for small PHAs, defined as PHAs that operate predominantly in rural areas with 550 and fewer combined Public Housing and Housing Choice Voucher (HCV) units. The Act gives relief for inspections of both public housing and HCV units to these small PHAs. Public housing units will not be inspected more than once every 3 years unless the PHA is designated as Troubled based on their physical inspection scores. HCV units will be inspected at least once every 3 years to determine whether the unit is meeting inspection requirements. HUD shall apply the same standards to small PHAs for the acceptable condition of public housing units that apply to units assisted in the HCV program.

If the small PHA is considered Troubled due the physical inspection scores, HUD will have an appeals process to dispute the designation. The appeals process includes an official who has not been involved and is not subordinate to a person who has been involved in the original determination to designate the PHA as Troubled.

When a small PHA is designated as Troubled, HUD and the Troubled small PHA will enter into a Corrective Action Agreement within 60 days, requiring PHA to correct the deficiencies that determined the Troubled status. The terms of the agreement will include the following:

- ▶ Have a term of one year that can be renewable if approved by HUD
- ▶ If feasible, provide assistance to assist the Troubled small PHA in correcting their deficiencies
- ▶ Reconsider the Troubled status of the small PHA at least, annually
- ▶ Termination of the agreement when HUD determines the small PHA is considered no longer Troubled
- ▶ In the event of substantial noncompliance by the small PHA, HUD may
 - Contract with another PHA or private entity to manage the small PHA
 - Withhold funds from the small PHA
 - Take possession of the small PHA
 - Petition for the appointment of a Receiver
 - HUD may exercise any other remedy available in the event of a default of the ACC

The Act also provides some administrative relief by providing small PHAs a streamlined process for development and modernization projects. Small PHAs with a cost of \$100,000 or less will be exempt from any environmental review requirement. If the development or modernization project is greater than \$100,000, then the environmental review will be streamlined.

The Act goes on to discuss utility and waste consumption for operating subsidy. The Act added language allowing the small PHA to elect to pay for its utility and waste management costs under a formula for a period, at the discretion of the small PHA, of under 20 years. This will be based on the small PHA's average annual consumption during the 3-year period preceding the year in which the election is made. HUD will make an initial one-time adjustment in the consumption base level to account for differences in the heating degree day average over the most recent 20-year period compared to the average in the consumption base level. HUD will also make adjustments in the consumption base level to account for an increase or reduction in units, a change in fuel source, a change in resident controlled electricity consumption, or for other reasons. Any savings the small PHA accumulates can be used for any public housing purpose of the small PHA. The small PHA will not be required to use a 3rd party service for its energy conservation program and may use their own discretion to determine the source, terms, and conditions of any financing used for its energy conservation program.

Consortia PHAs can likely expect new/updated reporting [FDS] requirements. Per the Act, HUD has 180 days to implement this new reporting. Since the Act was approved in May, it could mean consortia PHAs with December year-ends will be required to submit under the new reporting requirements.

Within one year of the Act [May 2018], HUD plans to use a shared waiting list for all PHAs and owners of multifamily properties receiving assistance from HUD. HUD will make the waiting list available on their website using 1 or more software programs.

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ABOUT BDO PHA FINANCE

BDO PHA Finance, a division of BDO USA, LLP, provides accounting and management consulting services to Public Housing Authorities (PHAs) nationwide. We are proud to be making a difference for the housing authorities that serve communities throughout the United States.

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