

# **BOARD OF COMMISSIONERS HANDBOOK**



This handbook is designed to introduce Commissioners to their responsibilities as members of the Southeast Nebraska Housing Partnership. It is our hope that this will be a useful tool and reference during your tenure as a Commissioner.

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# **HOUSING AGENCIES IN NEBRASKA**

## **Overview**

The first Housing Agencies were established from the United States Housing Act of 1937. Since then Housing Agencies have been established in nearly every county of the state. Housing Agencies manage low-income housing programs and a variety of other housing assistance programs for low income families, elderly persons, disabled persons and other members of their community.

America's housing Commissioners exert a powerful influence in the nation's housing community. They are responsible for overseeing the expenditure of billions of federal, state and local dollars to manage locally governed public housing which is allocated for the purpose of housing low-income persons. They help direct the management of programs that benefit more than millions of American families. Commissioners are the supporters of both affordable housing programs and the people that such programs serve.

Commissioner's responsibilities are the governance of the Agency, the oversight responsibilities, fiduciary obligations and financial viability. Commissioners are charged with ensuring fairness in the administration of Housing Agency policies, attracting adequate resources, balancing the demands of conflicting community groups, and winning public support. Moreover, as they conduct the business of overseeing local public housing operations, Commissioners must be aware of and follow federal, state and local laws and housing regulations to the letter. The leadership and service of an involved and committed board of Commissioners are essential for meeting the housing needs of low-income citizens.

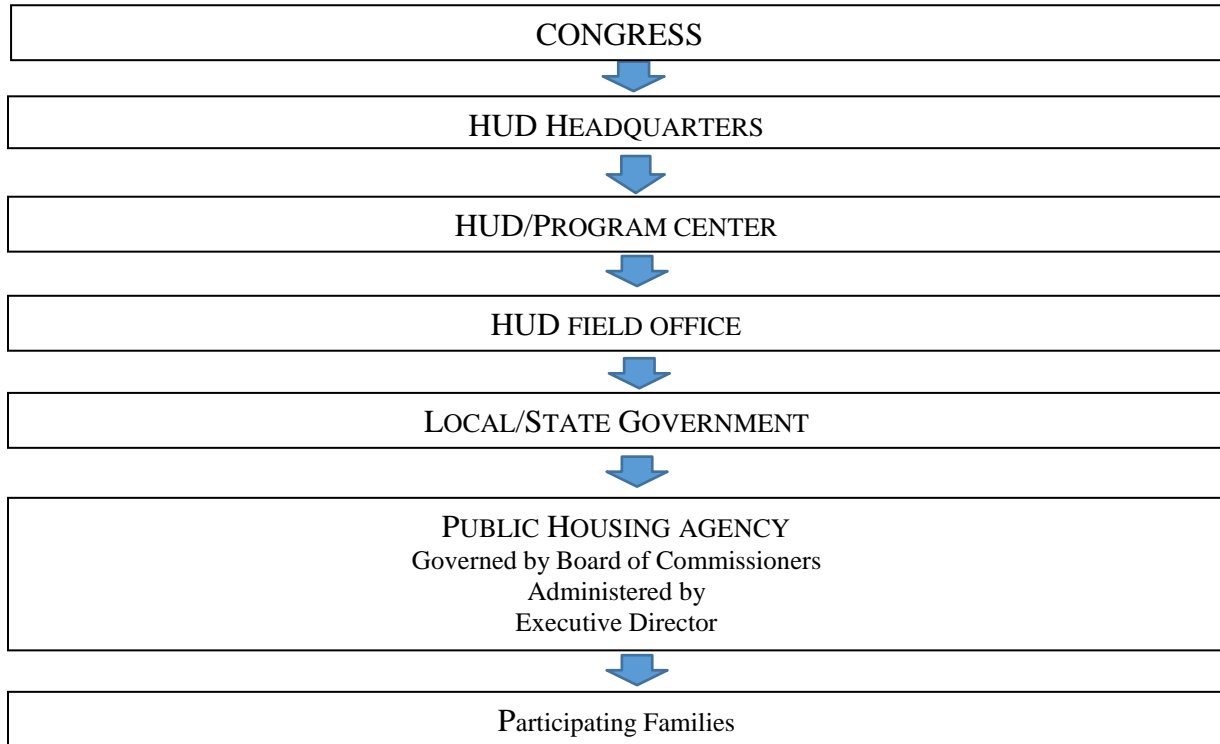
Commissioners should:

- Believe in the ability to transform communities and the people who live in them for the better.
- Understand that it is an evolving and ever-changing industry, subject to federal legislation, and community acceptance. Commissioners then, should keep abreast of the significant legislative and programmatic changes that occur in the field.
- Know that they are responsible for the proper administration of Housing Agencies and that, with the assistance and cooperation of the Executive Director, they must assure that an Agency operates strictly within the parameters of the law.
- Be familiar with the financial transactions, contracts, and administrative procedures practiced by the Housing Agency and should work to assure that such activities are instituted and conducted to the highest possible standards.

New Commissioners should make a point of becoming familiar with any legal agreements between the Agency and the Department of Housing and Urban Development, city or county. Commissioners should understand any federal regulations governing Agency activities and be familiar with HUD notices and guidebooks.

## How Housing Agencies Are Established

Nebraska Statutes 71-1572 to 17-15,168, known as the "Nebraska Housing Agency Act", authorizes jurisdictions to establish Housing Agencies in the city, county, village etc... Other statutes authorize creation of county, village, veteran, elderly and Indian Housing Agencies.



## Functions of a Housing Agency

A Public Housing Agency is a largely autonomous public corporation established to provide housing assistance primarily to low-income households. Nebraska Revised Statutes grants to the Housing Agency all the public powers necessary or convenient to carry out the purposes and provisions of the Housing Agency Act with the exception of the power to levy taxes. The statutes focus on construction, acquisition and management of housing and include the power of eminent domain.

Most of the funds awarded to Housing Agencies come from the Department of Housing and Urban Development. Other funding sources include Rural Development, part of the Department of Agriculture.

Housing Agencies administer many housing programs that are guided by the regulations, which come with these funding programs.

## Linkage to Local Government

As indicated above, a Public Housing Agency is a separate public corporation with separate powers. The local government is responsible for establishing it and for appointing a commissioner to the Agency. It does not have other direct powers over the Agency.

In some cases, Housing Agencies contract with the local government to provide various support services. The purpose of these contracts is to allow the Agency to focus on the primary mission of creating and maintaining affordable housing.

Housing owned by the Housing Agency is not subject to property taxes. However, many federal housing funding programs allow the payment of a Payment In Lieu Of Taxes or PILOT to help offset the cost of providing government services to the Housing Agency. PILOT's are not required by Nebraska.

Housing Agencies may be required to provide the local government with an annual report of its activities. This can be accomplished by providing an audit if the Housing Agency does not do a more formal report.

## **APPOINTMENT OF COMMISSIONERS**

### **Appointment**

Each Local Housing Agency is governed by a minimum of five Board of Commissioners while each Regional Housing Agency is governed by the number of commissioners who shall be appointed by each participating political subdivision as agreed upon by the participating political subdivisions and appointed by the chief executive of the political jurisdiction within which the Agency is established. Each Commissioner serves a five-year term and may be reappointed. The term of each Commissioner expires in a different year to ensure continuity.

### **Residents as Commissioners**

The Quality Housing and Work Responsibility Act of 1998 requires anyone who is a recipient of the Housing Agency services be a member of the Board of Commissioners. Please refer to the latest HUD regulations regarding residents on Housing Agency Boards. Part III Department of Housing and Urban Development – 24 CFR Part 964 Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body; Final Rule. Date: October 21, 1999.

### **When Vacancies Occur**

Vacancies on the board are never considered cause to delay program activities. Nebraska statutes provide that a commissioner hold office until a successor is appointed and confirmed. The purpose of this stipulation is to assure that the work of the Housing Agency will not be delayed by a vacancy on the Board. On a five-member Board, three Commissioners shall constitute a quorum for

the purposes of conducting business. On a six or seven-member Board, four Commissioners shall constitute a quorum.

## **Qualifications**

A Commissioner should be chosen on the basis of a demonstrated ability to represent the community and for their professional experiences. A Commissioner must also be willing and able to devote the time and energy required to carry out the demands made on them.

Persons officially connected with a political party may not be appointed as Commissioners. Officials of the local government may serve as Commissioners, however, no more than one such officials from each jurisdiction may serve. Nebraska Statute contains provisions that bar appointment as a Commissioner of a person, who because of business interests may find himself or herself in a position of conflict if appointed. (See the Section on Conflict of Interest Statutes for further information on this issue).

All members, officers, and employees of an agency whose employment as such constitutes their principal employment are subject to the provisions of the Hatch Act as amended in 1975. This federal act requires that employees may not:

- Engage in any political or partisan activity while on duty;
- Use his/her official Agency or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- Be required as a duty of his/her office of employment or as a condition for employment, promotion, or tenure of office to contribute funds for political or partisan purposes;
- Coerce or compel contributions for political or partisan purposes by any other employee of the agency;
- Use any supplies or equipment of the agency for political or partisan purposes;
- Identify their agency position with any public statement of personal opinion about any issue unrelated to their agency work or activity; or
- Seek candidacy for elective office in a partisan election.

If any individual who is also engaged in some other employment or occupation is doubtful as to his/her status under the Hatch Act, he/she may present the matter in writing to the United States Civil Service Commission for a ruling.

## **Removal of Commissioners**

A Commissioner may be removed from office for inefficiency or neglect of duty or misconduct in office. Removal is done by the appointing official.



## **THE BOARD & EXECUTIVE DIRECTOR – AN EFFECTIVE TEAM**

Housing Agency Commissioners provide leadership, set policy, approve budgets, and earn support in the community for housing programs. Commissioners must allow the Executive Director and staff to handle the day-to-day management of the agency's programs. The Commissioners' role is that of policy maker, while the responsibility of the Agency's administration belongs to a paid professional working full or part-time as the Executive Director of the agency. This person manages the operations and reports to the board.

Without an effective Executive Director, an Agency cannot be successful. Without a positive working relationship with the Board, an Executive Director cannot be effective.

### **Defining Responsibilities**

It is easy to say that the Board sets policy while the Executive Director (ED) is responsible for the management. There are, however, gray areas within this definition, and the Board and ED must come to an agreement on these if they are to succeed.

The Board hires an auditor to audit the financial records, but the ED seeks bids for the audit and makes a recommendation to the Board. The ED will conduct a Request for Proposal (RFP) for an independent financial audit if their combined federal funds from all programs total \$750,000 or more. PHA's need to know whether funding from a State program originated from federal appropriations and therefore must be counted in this equation. The board may appoint a Contracting Officer, who shall administer all procurement transactions. Most times, this is the ED but some roles or limited functions of contract Agency can be appointed to the financial manager.

The board creates policies for effective financial management and ensures good internal controls are in place to prevent fraud, mismanagement and discrimination. The board approves budgets, but the ED invests funds, to ensure bills are paid and handles the day to day operations and expenditures. The board approves bids for major purchases, but the ED makes a recommendation and then carries out the actual purchase. Each PHA should create a Procurement Policy that complies with the procurement standards of 24 CFR 85.36.

The Board is responsible for writing the agency's long-range plan, but the ED makes recommendations and implements the plan once it is completed. This responsibility can be accomplished through the creation of the PHA's 5 Year and Annual Plan if the PHA operates public housing or strategic planning processes.

The Board approves departmental budgets and general funding for staff salaries, but the ED decides the scope of each department's activities and recommends individual salaries and the amount of raises the staff receives.

The Board sets broad personnel policies, but the ED determines the level of staffing, writes job descriptions, and hires, promotes, evaluates, or fires staff. It is not unusual for a staff person to take a concern or complaint directly to the Board or to an individual Board Member. However, when this occurs, it is the Board Member's responsibility to clearly remind the staff person of the

chain of command. The board member should urge the staff person to take up the issue with the ED (or his immediate supervisor) and to follow the internal grievance procedure as necessary.

## Governance

The dictionary defines the governance as “the system or manner of government.” The holistic approach involves the partnering of HUD, Board of Commissioners, Local Officials and Community Stakeholders.

For a troubled PHA, it takes necessary steps to identify and remedy PHA governance and financial management failures before the resident and community are negatively impacted.

## Roles of Board vs. Executive Director

TASK	BOARD ROLE	EXECUTIVE DIRECTOR ROLE
5 year PHA Plan (if applicable)	Approves	Recommends & Provides Input
PHA annual plan (if applicable)	Monitors & Evaluates Progress	Establishes and Carries Out
Day-to-Day Operations	No Role	Makes All Decisions
Budget	Approves	Develops & Recommends
Routine Monthly Expenditures	Monitors	Establishes & Carries Out
Development of Policy	Adopts & Monitors	Recommends & Carries Out
Billing, Credit & Collections	Adopts Policy	Recommends & Carries Out
Hires, Directs, & Evaluates Staff	No Role	Approves
Employee/Resident Grievances	No Role	The Grievances Stop Here
Employee Salaries	Allocates by Line Item in the Budget	Approves Salaries with Recommendation from Supervisors
Evaluating Staff	Evaluates the Executive Director	Evaluates all Other Staff

## Areas of Responsibility

Main areas of responsibility for Commissioners include:

1. Making decisions that are in the best interest of the agency. Your job is to serve as an advocate for the Housing Agency.
2. Setting policy for the operation of the Housing Agency. Policies are very important, as they will ensure that the agency is run in an effective, efficient, ethical and legal manner. The PHA policies will provide direction for the agency, reflect the values of the board, and comply with applicable federal, state and local laws and regulation.
3. Although a commissioner does not have direct responsibility for the daily income and expenses, they do monitor the financials of the agency by reviewing agency financial statements.
4. Setting long and short-range goals with the use of the 5 year plan and annual plan along with input from the Executive Director. These goals will determine the direction in which the agency is to proceed.
5. To hire a qualified Executive Director to implement policies, direct housing programs, manage staff and day-to-day operations.

## What Makes an Effective Commissioner

An effective Commissioner will:

1. Have knowledge of the purpose, goals, policies, programs, services, financial constraints, and needs of the agency. A Commissioner will exhibit leadership capabilities.

2. Avoid making decisions or judgments based on information received solely from individuals or outside groups. Experience in conducting a board meeting via Roberts Rules and knowledge of the Nebraska Open Meetings Law
3. Deal honestly and fairly in all matters related to Housing Agency operations.
4. Be an advocate in the community for the agency. Commissioners should never discuss actions, decisions, staff or any aspect of the Housing Agency in a negative manner with outside individuals or groups.
5. Refrain from getting involved with the day-to-day operations.
6. Attend commissioner trainings and housing conferences, when available.

### **Chairperson Responsibilities**

The Board Chairperson must understand that he or she has no special Agency beyond that of any other Board Member unless the full board decides otherwise. For example, the board may delegate specific powers to the Board Chairperson/President like managing meetings, representing the Board to the public or signing contracts and checks on behalf of the board.

In other words, any powers the Board Chairperson/President has must first be granted by the full Board either in policy or accepted board practice. This means that the Chairperson/President cannot speak or act for the board unless the full board has formally or informally delegated this privilege.

Traditionally, the Board Chairperson/President has several duties:

- **Planner** – The Chairperson works with the ED to plan the meeting agenda as well as how the meeting will be conducted. The Chairperson keeps an overall view of the board calendar and makes sure that duties mandated by board policy or by law are completed on time.
- **Facilitator** – The Chairperson must be viewed as a facilitator, rather than a controller, of Board Meetings. He or she begins the meetings on time, directs the Board through the agenda and attempts to adjourn the meeting on schedule. As facilitator, the chairperson/president ensures that all Board Members have the opportunity for a fair participation, attempts to make sure all sides are heard, and moves the Board to action on the issues.
- **Delegation** – The Chairperson/President traditionally has the power to appoint Board Members and others to committees, with Board consent. To do this, he or she must spend extra time with individual members to learn their skills, strengths and interests so that appropriate assignments can be made. It is also the Chairperson's/President's responsibility to make sure that committee assignments are clear and to hold the committees accountable to the job assigned. The Chairperson/President often serves on committees.
- **Liaison** – The Chairperson/President must be able to communicate the Board's needs and concerns to the ED and vice versa. In addition, the Chairperson/President offers personal support and counsel to the ED and acts as his or her sounding board.
- **Team-builder** – It is the duty of the Chairperson/President to foster structure among Board Members. When this cooperation is endangered, he or she must mediate, counsel and discipline fellow board members to keep the team intact to achieve needed

cooperation. The Chairperson/President must mediate so that all work is directed to the mission of the agency.

### **Resident Commissioners**

With legislation passed in recent years, most Housing Agencies now have Resident Commissioners serving on their agency boards. The purpose of including residents on the Board is to bring their perspective to Board discussions and, ultimately, to the decisions that are made. They are not there to represent any other resident or organization, but rather to share their knowledge from the resident's viewpoint. The Resident Commissioner has the same duties and responsibilities as the other Commissioners.

### **Importance of a Good Working Relationship**

In order to have a well-run agency, it is important to have a good working relationship between the Board and the Executive Director. To this end, a Commissioner should:

1. Allow the Executive Director to do his/her job without interference.
2. Always be open and honest about any problems or concerns that arise.
3. Never ask special favors of the staff, including requests for information, unless you have consulted with the Executive Director.
4. Refrain from taking it upon yourself to meet with staff, discuss Housing Agency business with constituents or seek any public forum on an individual basis. Always ask for information from, and through, the Executive Director, preferably at a Board meeting.
5. Support the Executive Director in his/her relationships with outside groups or individuals.

### **Avoiding Conflict**

To avoid conflict, Commissioners should:

1. Serve the agency as a whole rather than any special interest groups or individuals.
2. Avoid even the appearance of a conflict of interest. Disclose any possible conflict of interest to the Board in a timely manner.
3. Maintain objectivity on all matters coming before the Board. Be fair, ethical and always exhibit personal integrity.
4. Never accept (or offer) favors or gifts from (or to) anyone who works for, is a constituent of, or does business with the Housing Agency.

### **Never Second Guess the Executive Director**

If the Board discovers something that the Executive Director is doing which they do not like, or if they have received a complaint, they should sit down and discuss this with him/her. While the Commissioners should be sensitive to the public, they should not allow others to bypass the Executive Director. He/she, not the Commissioners, is ultimately responsible for the daily operations of the Housing Agency and should be given a chance to handle the problem at hand. This also pertains to staff. It is the responsibility of the Executive Director to hire, fire, supervise, evaluate, promote, etc. the staff. All employee complaints, grievances, etc. should be brought to the Executive Director to be handled according to the established grievance policy and not the board.

The Commissioners and the Executive Director work as a team. It is the Board's responsibility to support the Executive Director and it is the Executive Director's responsibility to inform and advise the Board. The Commissioners provide support by providing direction and good policies. The Executive Director has the Agency to carry out the Board's plans and is the manager of the operations.

### **What Not to Do**

A Commissioner should not:

1. Hold meetings individually with constituents. If either the staff or clients contact a commissioner, they should be reminded of the chain of command and be encouraged to talk with the Executive Director or their immediate supervisor.
2. Be a spectator at Board meetings. Participation is needed from all who sit on the Board.
3. Interfere in the day-to-day operations of the Housing Agency.
4. Criticize the Housing Agency operations or staff to the press or other outside individuals or groups. Any concerns should be discussed with the Executive Director and at a meeting of the Board.
5. Make decisions via email or by telephone. All decisions must be made according to the open meetings law.
6. Discuss Housing Agency business outside of the Housing Agency board meeting.

### **Closed Sessions**

The Board of Commissioners should never meet in closed session without the Executive Director present. The Executive Director is the link with the agency. He/she knows every aspect of the organization and should be involved in all decisions. (See appendix for Open Meeting Law Summary)

## **BOARD OF COMMISSIONER MEETINGS**

### **Duties of Commissioners**

- Set policies for the Housing Agency regarding its course of action.
- Pass resolutions that give the Housing Agency the direction from the Board.
- Determine how policy is implemented by reviewing reports submitted at meetings by management staff.
- Receive information as to the status of current programs or upcoming issues that are important to the Housing Agency
- Review financial information.

### **Preparation for the Meeting**

- Several days before the meeting, the Commissioners should be provided with copies of the agenda and all resolutions or other materials to be discussed at the meeting. This will allow Commissioners a chance to review the information and make sound decisions on important matters to come before the Board.
- Commissioners should review all materials received prior to the meeting so they will be familiar with the issues that will be discussed at the meeting.

### **During the Meeting**

- Adhere to the established meeting procedures.
- Limit action on any new topic not on the agenda to discussion unless it is of an emergency nature.
- Keep the meeting focused and stay on time. The actual meeting should not last more than 2 to 3 hours.
- Ask questions about topics being voted on.
- Suggest issues or topics to be placed on the agenda for the next meeting.
- Robert's Rules of Order should prevail.

### **Follow-up to the Meeting**

- Minutes are written up and sent to the Commissioners prior to the next meeting.
- If possible, any actions dictated by the Board will be implemented by the Executive Director prior to the next meeting.

### **Suggested Agenda Items**

Roll Call

Approval of Minutes of Previous Meeting

Approval of Financial Statements and Bills

Communications

Reports of Committees

Report of Executive Director

Unfinished (Old) Business

New Business and/or Public Comments

Set Next Meeting Date (*unless always scheduled on a specific date, such as the first Tuesday of every month at 9:00 AM*)

Adjournment

## **STRATEGIC PLANNING**

### **Guiding An Effective Agency**

Once a commissioner understands the legal framework and the financial streams that establish and support the agency, attention should move to helping the agency pursue its missions. The daily duties to fill vacancies, repair apartments and complete extensive paperwork, too often leave little time to concentrate on agency goals.

However, to be truly effective, short and long-range goals have to be established and evident to Commissioners, managers and staff. The purpose begins with a mission. The mission of the agency needs to be clearly identified and re-visited periodically so that funds and energies are properly focused. The agency's mission may, and no doubt should, vary from HUD's adopted mission. The objectives of HUD may not take into account local service providers, or be tailored to the programs and buildings the Agency may operate.

The Agency mission statement should be a brief, clear and concise statement capturing the essence of the agency's efforts and giving direction for future action. While we provide housing on a daily and monthly basis, our true objective is to have programs and facilities available

beyond the thirty-year mortgages and contracts. The mission statement perspective should span decades. Long-range planning is a key responsibility for Commissioners. It provides direction to the Executive Director and helps the agency adjust to internal changes of staff and programs, and external conditions in the community.

After Commissioners have agreed to adopt or amend a mission statement, strategic planning begins. Strategic planning will help lead the agency from its current status, along a path of progress, toward accomplishing the Agency's mission. By examining the agency's strengths, weaknesses, opportunities and obstacles, Commissioners can direct attention and resources in a coordinated plan. As the mission statement establishes direction, specific strategies can be identified to take advantage of strengths and opportunities, and to address weaknesses and obstacles. This exercise might include reviewing program audits, HUD/WHEDA/RD management reviews, PHAS and SEMAP scoring, and fiscal records. Reports on the waiting list, occupancy, and utilization should also be reviewed. From that performance data, specific strategies can be considered that will allow you to work with your Executive Director to develop implementation plans.

At this point, Commissioners move to a role as evaluators to monitor progress on the strategic initiatives and how they impact the mission. This role continues until there is a need to amend the mission statement. With broad agency/community planning goals and strategies in place, Commissioners delegate short-term planning and implementation to management and staff.

Current regulations require the Agency to electronically file an Annual and Five-Year Plan with HUD if applicable. These plans can be useful tools for publicizing changes in agency programs or direction, and for documenting the flow of funds. In particular, the Five-Year Plan should be reviewed for compatibility with adopted strategies and evaluated in light of the agency's mission. See appendix for Agency Plans and Annual Plans review check list.

The agency also has an opportunity to affect other community planning processes that have an impact on affordable housing. Many municipal governments require all local governments to adopt long-range plans to include a focus on housing issues. It is important to give direction to state and local governments to ensure your agency's authorization and access to funds will allow it to meet affordable housing needs in your community.

**“Faircloth Limit” Unit Count** - Section 9(g) (3) of the United States Housing Act of 1937 ("Faircloth Amendment") limits the construction of new public housing units. The Faircloth Amendment states that the Department cannot fund the construction or operation of new public housing units with Capital or Operating Funds if the construction of those units would result in a net increase in the number of units the PHA owned, assisted or operated as of October 1, 1999. This requirement is referred to as the “Faircloth Limit.”

Even with a capable Board and Executive Director, and along with a comprehensive mission statement and effective strategies, unforeseen circumstances could change the course of action. Since our programs are the tools of legislators and partisan administrations, they are re-tooled or discarded from time to time to move your agency along paths that will lead to fulfillment of the mission.

## **POLICY MAKING AND /POLICIES**

### **Overview**

The Board of Commissioners of an Agency, in cooperation with the Executive Director, is responsible for developing and adopting policy. Some policies establish procedures to be followed; others set goals and direction for future activity. Adoption of policy should be documented in the written Minutes of Board Meetings. Policies guide the agency director and staff in carrying out their responsibilities. Effective policies provide clear guidance without placing rigid restrictions on implementation.

Federal and state regulations require a number of policies be in place for agency and program management. A policy manual may be useful to consolidate and document authorization and guidance from the Board of Commissioners. Policies should be reviewed periodically in light of changes in operations or regulations. Minutes of the board should note policies reviewed even if no revisions are made. When revisions are made, the new policy should be formally adopted by resolution.

Policies required may vary depending on the programs and developments under management. Policies are frequently distributed in program fact sheets and resident handbooks restating the policies in terms of resident/participant guidelines and rules. Below is a list of policies and examples of items that could or should be covered in these policies.

### **Admissions and Continued Occupancy (ACOP) or Tenant Selection Plan (TSP) - Agency-owned Housing**

- Marketing the program and property to all eligible persons.
- Determining applicant eligibility.
- Process and procedures for resident selection.
- Process for determining rent.
- Assessing eligibility for continued occupancy.
- Parameters for ongoing rent certifications.
- Procedures for evaluating/re-evaluating proper unit size.
- Procedures for termination and eviction.
- Execution of the lease and related residency documentation.
- Affirmatively Furthering Fair Housing (AFFH).

### **Administrative Plan - Housing Choice Voucher or Moderate Rehabilitation Program**

- Marketing the program and property to all eligible persons.
- Determining applicant eligibility.
- Process and procedures for participant selection and issuance of Vouchers.
- Process for determining rent.
- Process for qualifying dwelling units (inspection/reasonable rent).
- Assessment for continued participation and conducting ongoing rent certifications.
- Procedures for evaluating/re-evaluating proper unit size.
- Procedures for termination.
- Procedures for intake and export for households utilizing Voucher portability.



- Provisions for Family Self-sufficiency (FSS), Home Ownership, Congregate Housing or other program variations available as a local option.

### **Grievance Procedure: Allowing For Due Process Challenges to Administrative Acts**

- A grievance policy is mandated under federal regulations. It establishes the procedures to be followed when the Agency is taking an adverse action against an applicant, resident or program participant. The grievance policy is to be conspicuously posted.

### **Rent Collection**

- When rents are due and where rent is paid.
- Permitted or preferred forms of payment (cash, check, credit card etc.).
- Processing for maintenance and miscellaneous charges that arise.
- Process and parameters authorizing and addressing any partial payments.
- Late payment charges and procedures in pursuit of delinquent payments.

### **Personnel: Standards for Agency Relations with Employees**

- Authorizing Agency for hiring and firing decisions.
- Delineating positions, job description, salaries and benefits.
- Performance assessment with evaluations, probationary requirements, and a discipline process.
- Compensation/accrued absence policy

### **Investment: Utilization of Revenues Not Currently Needed for Operations**

- Periodic review of revenue and pending expenses.
- Establishing limitations to HUD approved investment vehicles.
- Requiring depositories be FDIC or FSLIC insured and allowing investment only to the insurance limit unless deposits are collateralized.

### **Capitalization: Define a Capital Investment**

- Establish a reasonable dollar value for capitalizing an item. All purchases above that level whether tools, equipment, improvements or additions are classified as a capital expenditure and not an operating expense. Consequently, all capital items must be inventoried and depreciated.

### **Disposition of Assets: Provide for Discarding Capital Items**

- Define a process to be followed when the Agency wishes to remove capitalized items from inventory. The Annual Contributions Contract with HUD sets minimum standards that must be included in this policy.

## **Community Space: Establish Criteria for Use of Common Areas**

- Set parameters for resident and public use of available space and facilities including price (if any), availability and reservation preferences.

## **Depreciation**

- Adopt a standard accounting procedure for tracking depreciation.

## **Policies**

- It is the commissioner's responsibility to assure that the policies are established and updated periodically. They include but are not limited to: purchasing and contracting, disposition, capitalization, depreciation, personnel, travel, rent collection and investment.
- Other policies such as auto, travel, media etc.

All policies need to be in compliance with HUD regulation, State and Federal Laws that are applicable. It is a good practice to have policies reviewed by HUD or Legal Counsel to ensure compliance.

# **FISCAL AFFAIRS**

## **Overview**

The Board of Commissioners is the legal recipient of all money awarded to the Housing Agency. This fiscal responsibility is reflected in the contracts, budgets, audits and other financial documents presented to them for authorization or rejection at virtually every meeting. It is the commissioner's responsibility to oversee a continuing judicious handling of funds through careful reading of financial reports and votes that guarantee sound fiscal policies. Several administrative devices for measuring and evaluating the local programs are available to a Commissioner: the budget, financial statement and the audit.

The Quality Housing and Work Responsibility Act of 1998 included a new procedure for assessing the financial management of Housing Agencies. This new procedure is incorporated into the Housing Assessment System. The system is intended to evaluate the financial condition, management operations, physical condition and use of Capital Fund Program resources by housing agencies. In regard to financing, HUD examines housing agency operations to determine whether an Agency has adequate monetary sources and to determine if those resources are being managed effectively. As a result, Housing Agencies are required to prepare financial information in accordance with Generally Accepted Accounting Principles (GAAP). All Housing Agencies that administer subsidized programs under the terms of an Annual Contributions Contract (AAC) or Housing Assistance Payments (HAP) must produce an annual financial statement that conforms to GAAP. HUD's Real Estate Assessment Center (REAC) assesses the financial condition of local Agencies. Housing Agencies have the option to either hire a fee accountant or have internal accounting staff.

It is the responsibility of the Executive Director to create budgets. Final approval is the Board's responsibility. Commissioners deal with three kinds of budgets:

- 1. Operating Budgets**, which maintain current programs;

2. **Developmental Budgets**, which make future programs possible; and
3. **Modernization Budgets**, which include the rehabilitation of existing housing.
4. **PILOT**, which is negotiated with the municipality. (see appendix for definition)

An operating budget is a realistic estimate of the Agency's operating receipts and expenditures. The Board of Commissioners must assure that the Housing Agency's business operations are conducted in a cost-effective and economical manner. The Commissioner, can evaluate budget items by:

- Comparing them with similar budget items from the previous year.
- Comparing proposed amounts with expenses charged against the budget item for the previous years.
- Asking for explanations of how the amount of various budget items were set.

Approval of a financial report is a standard part of Board Meetings. The reports should list expenditures and income by budget item and show balances on hand in various accounts. At a minimum, financial reports should be examined as follows:

- Check whether expenditures are in line with the amount budgeted for various budget items.
- Ask for explanation of items that are not clearly labeled or budgeted.
- Ask for explanation of items that are way above or way below budget.

The Agency's operating budget balances projected income and expenditures and serves as a plan of operation. As the year progresses, the budget also serves as a tool to measure performance and can be used to answer some important questions: Has income lived up to expectations? Have expenditures exceeded expected levels? Are programs funded under the budget performing?

A prudently managed operating budget is important. The challenge facing Commissioners is to achieve a balance between the short- and long-term benefits of budget decisions. For example, a decision may be made to reduce the Agency's day-care program. Not only would the level of services be reduced, but also working parents may be forced to stay home to take care of the children. Thus, a decision to reduce day-care services could result in the loss of a tenant's ability to pay rent.

Budget cuts in maintenance may lead not only to deteriorating living conditions, but also may contribute to a negative community image. The point is that a Commissioner must weigh the affects of decisions made on budgetary matters. A clear understanding of the Agency's operations, and the interrelated character of those operations are essential for sound decision- making.

Unless specifically requested, a Public Housing Agency does not need to submit the operating budget to the local field office for approval. Following the schedule below, which is completed by the Executive Director, should enable an Agency to meet its deadline.

### **First Through Sixth Month of Current Year:**

- Analyze past year's budget estimates vs. actual income and expenditures. Compare with previous years' activity to detect trends.
- Track current year's income and spending against budget, reviewing trends.
- Make specific requests for information necessary to upcoming budget.
- Ask the Executive Director and staff to assess the need for a formal revision of the current year's budget near the seventh month (if necessary at all).

### **By the Seventh Month or Eighth Month of your fiscal cycle**

- Complete any needed revision of the current budget.
- Develop an outline of programs to be included in the upcoming budget.
- Develop a tentative budget using information gathered to date.
- Refine administrative and operating program plans and related estimates for audits and other monitoring programs.
- Develop a final budget and complete drafts of budget schedules and associated materials. Review with staff and board.

Development budgets, those for construction of new housing, should take into account both the present and future. Cheap, poorly designed buildings in undesirable locations initially may cost less than alternatives; in the long run, however, they may present expensive problems. In budgeting for new programs, Agencies must plan for initial costs as well as long-term operating expenses. Commissioners budgeting for future programs often find themselves caught between two demands:

1. Be "realistic" about the budget; and
2. Make sure that new buildings are attractive, well designed and, in accordance with the local "housing assistance plan" and the Comprehensive Housing Assistance Strategy (CHAS), required by 1990 housing legislation.

It is interesting to note that the Language of HUD's Annual Contributions Contract reads, "*Each Project...shall be developed in such a manner that it will not be of elaborate or extravagant design or materials, and shall be developed and administered to promote serviceability, efficiency, economy, and stability and to achieve the economic and social well-being and advancement of the tenants thereof.*"

In establishing development budgets, Commissioners should pay careful attention to achieving the greatest cost savings in procuring goods and services.

An analysis should take place before the procurement process begins. Commissioners should ask Housing Agency management to provide such analyses as cost/benefit studies, lease/purchase considerations, product specifications comparisons, and opportunity-lost comparisons.

## **Funding for Public Housing**

Funding for public housing comes primarily from the U.S. Department of Housing and Urban Development (HUD), a cabinet-level department that establishes and carries policies aimed at implementing housing legislation passed by Congress. The Secretary of HUD is a Presidential Appointee. Also appointed by the President is the Assistant Secretary for Public and Indian Housing, whose office is responsible for HUD's contributions and subsidies to local Housing Agencies and for approving budgets and auditing programs. HUD's network of field offices and FHA offices administer programs and carry out policies developed in Washington. The main sources of revenue for federally assisted housing programs are:

1. HUD operating subsidy and modernization funds;
2. Rental income; and
3. Interest on investments. Investment income comes from excess funds that are deposited in the general fund and credited to the operating reserve. See your Housing Agency investment policy as not all funds are invested equally or at all. (HUD rules apply)
4. Other revenue or resources

The Quality Housing and Work Responsibility Act of 1998 (QHWRA) creates two funds—essentially block grants—for local Housing Agency funding: a Capital Fund and an Operating Fund.

The Capital Fund allows housing agencies to develop, finance and modernize public housing—including mixed-finance developments—and to use funds for vacancy reduction.

The Capital Fund also can be used to address deferred maintenance activities, to bring dwellings into compliance with local building codes, for management improvement, demolition and replacement of units, resident relocation, expenditures that improve self-sufficiency efforts, security improvements and home-ownership programs.

QHWRA allows agencies with 250 or more units to use a percentage of their Capital Fund (CFP) for operating expenses. The Act allows agencies with less than 250 units to use up to 100 percent of the Capital Fund for operating purposes. However, if the planned expenditure is a capital improvement it should be on the appropriate line item in the CFP budget, not put into the operations account.

The Operating Fund can be used by local Agencies for “soft costs” to operate and manage public housing programs and must only be used for non-capital operating costs. (Capital costs are those that would be classified under line 7540, Property Betterments and Improvements, in the PHA's Operating Budget). The fund can be used to reimburse security activities, supportive services, insurance costs, energy costs, debts incurred and, generally, the costs associated with operating a mixed-finance development.

The secretary of the Department of Housing and Urban Development may withhold or limit a Housing Agency's Capital Fund or Operating Fund if an agency fails to meet the requirements specified in the Quality Housing and Work Responsibility Act.

HUD funding for public housing programs continues to be reduced. Housing Agencies should not rely solely on HUD funds. Exploring and accessing other resources including grants, partnerships, State and local programs will provide ongoing revenue to meet increasing costs of maintaining the property. Commissioners must be aware of Congressional activity and how federal spending affects local Housing Agency operations.

### **Annual Contributions Contract**

The Annual Contributions Contract (ACC) is the key funding agreement between the local Housing Agency and federal government through HUD. In accepting the terms of the ACC, the local Agency promises to develop and operate its developments and programs for the sole purpose of providing decent, safe and sanitary dwellings for low-income families. It further pledges to manage its development efficiently and economically, maintaining it for ongoing occupancy. In return, the local Agency receives grants from HUD for the development, operations and modernization of its communities. Originally, the annual contributions were intended to cover only the cost of the initial construction and related financing costs. Today, however, with rental income falling far short of operating expenses, HUD also provides operating subsidies to help Agencies meet their expenses.

HUD grants, provided under the ACC, also help pay for modernizing existing housing. Modernization funds for Agencies in need of rehabilitating their housing stock and making other necessary capital improvements are available under the Capital Fund. Projects, primarily those located in larger cities, may qualify for funds appropriated for the major revitalization of distressed public housing projects through HOPE VI grants.

### **Housing Assistance Payment Contracts**

The Housing Assistance Payments (HAP) is the key funding agreement between the Housing Agency and federal government through HUD. In accepting the terms of the HAP, the Agency promises to develop and operate its developments and programs for the sole purpose of providing decent, safe and sanitary dwellings for low-income families. It further pledges to manage its development efficiently and economically, maintaining it for ongoing occupancy. In return, the Agency receives grants from HUD for the development, operations and modernization of its communities. This form of Housing Assistance Payments Contract (HAP contract) is used to provide Section 8 tenant-based or project based assistance under the U.S. Department of Housing and Urban Development (HUD).

### **The Annual Audit**

Housing Agencies are required depending upon certain programs/regulations to conduct an annual audit using the services of an independent public accountant (IPA). It is the Board's responsibility to hire the IPA. Hiring should be done well before the end of the year subject to audit. The Audit Act provides guidance on what areas should be examined.

Commissioners may meet with the IPA if problems exist. The Board should feel free to ask questions and perhaps provide suggestions that would alter the IPA's scope. Ultimately, the Board should approve the scope of the audit.

As soon as the audit is completed, the Board should request to review the audit-results. During the

review, the IPA presents audit results, findings, adjustments, internal control problems and questioned costs to the Board and Agency management. Ultimately, the Board accepts the audit report and results of work, including management's corrective action plan. Housing Agencies must submit their annual audit report electronically to HUD within nine months after their fiscal year ending for certain programs.

### **Financial Information For Sound Management**

Commissioners must receive a regular flow of information from the Executive Director in order to make informed decisions. To ensure a regular and consistent flow, Boards and Executive Directors should work out a dependable system for getting information to Commissioners, preferably well in advance of Board Meetings. Of particular importance is financial information.

New Commissioners should be briefed thoroughly by the Executive Director on the Housing Agency's affairs. The ED may provide the following information which is useful in monitoring the financial condition of the Housing Agency:

- Six-month and year-end financial statements:
- Monthly or quarterly reports on the status of expenditures vs. budget.
- An analysis of the operating reserve.
- An analysis of rent collections and rent collection policies and procedures.
- An explanation of the development of annual operating budget and schedules.
- An analysis of staffing levels vs. units and a trend analysis.
- An explanation of any pending litigation and contingent liabilities.
- Status and analysis of Tenants' Accounts Receivable.
- An explanation of the agency's internal controls.
- A review of any findings of the annual audit.
- A report on any findings from HUD reviews of agency financial activities.
- Progress on REAC, SEMAP, PHAS scores.

### **HUD Monitoring and Assessment of Agency Performance**

In signing the HUD contracts, housing agencies agree to undergo regular HUD reviews. Through its field offices, HUD periodically monitors each Agency to ensure that it is:

- Providing decent, safe and sanitary housing to low-income families.
- Carrying out statutory, regulatory and contractual obligations.
- Properly managing federal funds without waste or fraud.
- Adhering to civil rights requirements, set forth first in 1962 when the President directed public housing to avoid all racial bias in its development and occupancy policies, and later in 1964 under Title VI of the Civil Rights Act, which prohibited discrimination in programs or activities receiving federal funding assistance.

Housing Agencies will be assessed based on their performance in the areas of physical condition, financial condition and management operations. HUD has created several entities that will participate in the assessment process. The Real Estate Assessment Center (REAC) will assess conventional public housing and the performance of all HUD properties, including those administered under programs such as Section 8, Section 236 and Section 202. REAC also has

the goal of assuring that all HUD accounting be based on Generally Accepted Accounting Principles (GAAP).

HUD reviews the Housing Choice Voucher Program through SEMAP analysis which ensures compliance with regulations.

HUD will address the problems of Agencies that have been classified as troubled.

While Commissioners do not normally get involved in the assessment, they should be informed of the assessment results. The assessment is intended to produce a realistic evaluation of an Agency's strengths and weaknesses. It is important that Commissioners discuss the results of the PHAS/SEMAP with the Executive Director. Commissioners need to be aware of problems that are discovered, particularly since they may be called upon to approve improvement plans for correcting deficiencies.

Housing Agencies—and specifically Commissioners—are responsible for ensuring that any problems identified in the assessment are corrected. To assist in making the correction, HUD provides, to the extent possible, the necessary technical assistance or identifies other sources of assistance.

If problems are not addressed in a timely fashion by the local Agency, HUD can impose sanctions, ranging from the withholding of discretionary grants to taking control of the management of HUD-funded developments. No one is eager to serve an Agency with sanctions. The emphasis should be placed on working cooperatively so that problems are corrected and the housing program is strengthened.

### **Executive Compensation**

The 2013 Appropriations Act for HUD capped the amount of Federal Public Housing and Housing Choice Voucher funds that could be used for PHA salaries at \$164,200 per employee. The HUD Appropriations Bill for 2014 repeats this same provision. Any amount of salary above that level must be paid for with other funds.

Housing agencies receive Federal funding to administer Federal housing assistance programs, but they are state or locally-run entities. This means that while Congress has capped the amount of Federal Public Housing and Housing Choice Voucher dollars that may be used for executive salaries, other Federal, state or local funds may be used to exceed that cap.

## **LEGAL MATTERS**

### **Overview**

The United States Housing Act of 1937 opened the door for the era of housing programs. Following the passage of this Act, states were required to pass legislation that would permit local governments to create Housing Agencies. The ensuing State Law mandated:

- The status of the Housing Agency as a legal entity.
- The area of jurisdiction – county, city, etc.
- The legal powers and restrictions.



- The types of activities the Housing Agencies are permitted to engage in.
- The number of Commissioners and whether they are appointed or elected.

Housing Agency Boards must comply with Federal, State and local guidelines in the development and management of their housing stock.

### **Annual Contributions Contract/Housing Assistance Payment Contract**

In order to receive federal assistance, each Housing Agency is required to enter into a contract called Annual Contributions Contract (ACC) or Housing Assistance Payments Contract (HAP) with the Department of Housing and Urban Development. This contract specifies the responsibilities of the Housing Agency in developing and managing the financial aspect of their programs.

### **The Quality Housing and Work Responsibility Act of 1998**

Congress passed the Quality Housing and Work Responsibility Act (QHWRA) in 1998. This Act requires Housing Agencies to prepare annual and five-year plans that outline the Agency's operation, goals, objectives and finances for public housing programs. In addition, it requires de-concentration of low-income residents, safety and security procedures, background checks on prospective tenants, and files to be maintained on public housing residents. It also specifies the targeting of resources to the Agency's clients and allows for a mix of financial development options.

### **Public Officials Liability Insurance**

Many Housing Agencies offer the protection provided by Public Officials Liability Insurance, also known as Directors and Officers Insurance. This type of insurance protects Commissioners, officers, and staff against claims based on wrongful acts committed or alleged to have been committed in the course of their duties.

### **Fidelity Bonds**

All Housing Agencies are required to obtain Fidelity Bond Insurance coverage in an adequate amount to protect the agency from dishonest acts by Commissioners and staff. The minimum requirement is that this insurance covers officers or staff who handle cash and/or who are authorized to sign checks on behalf of the agency. Several forms of fidelity bonds are available.

The agency through which you have your programs – e.g. HUD, Rural Development, and WHEDA – will be able to provide guidance on the type and amount of coverage that your Agency should obtain.

### **Commissioner's Liability**

Housing Agency Commissioners and staff are subject to potential liability suits in several areas. These include, but are not limited to:

- Breach of contract.
- Torts – intentional or negligent wrongful acts.
- Constitutional or civil rights violations.

- Acts in excess of Agency.
- Discrimination against any of the protected classes.

Nebraska Statutes provide general indemnification of employees and officers of governmental bodies for suits brought against them for acts performed within their official capacity. This means that the Housing Agency itself must pay any damages assessed against a Commissioner, as well as legal fees.

Suits are less likely to be successful if commissioners are acting in good faith. Good faith implies that the actions were free from fraud and collusion, and that the action was not arbitrary.

There are ways to minimize the possibility of successful suits against the Housing Agency or the Commissioners. These include, but are not limited to:

1. Establish policies and procedures that comply with federal and state legislation protecting the civil rights of tenants and staff. These policies should be established in written form, with resolutions adopted by the Board to approve these policies. They should be recorded in the meeting minutes.
2. Train all staff and Commissioners in what these policies are and how they apply to their duties.
3. Make sure the policies are followed.
4. Seek legal counsel when in doubt. This demonstrates the intention to act in a reasonable and prudent manner.
5. Stay informed on issues confronting the Housing Agency. The defense of acting in good faith can be lost if you act or fail to act because of ignorance or lack of readily available knowledge.
6. If a suit seems likely, contact legal counsel, liability carrier and the funding agency immediately.

### **The Nebraska Open Meeting Law**

The Nebraska Open Meeting Law provides that all meetings of governmental units, including Housing Agencies, shall be open to the public and held in places reasonably accessible to members of the public unless otherwise expressly provided by law.

In the context of the law, “meeting” means the convening of members of a governmental body for the purpose of exercising the responsibilities, Agency, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, it is presumed that a meeting is in session for the purpose of exercising the responsibilities, Agency, power or duties delegated to or vested in the body. Social or chance gatherings, however, which are not intended to avoid meeting this law, are not included.

The right of the public to attend a governmental meeting does not necessarily imply a right to participate or have input into the meeting. The Open Meeting Law deals solely with the public’s right to be present. It is, however, complimented and supplemented by laws that afford the opportunity to speak by requiring public hearings as part of some legislative, quasi-judicial and administrative proceedings.

The Open Meeting Law deals with rights of the “general public” rather than special interests such as the press and other media. However, the law compliments other laws affording specific members of the public, such as parties in particular proceedings, rights to special notices of upcoming meetings affecting their interest.

Whenever a meeting is held in open session, they are required to make a reasonable effort to accommodate any person desiring to record, film or photograph the meeting. This does not mean any person is allowed to record, film or photograph a meeting in a manner that interferes with the conduct of the meeting or the rights of the participants.

The Open Meeting Law also requires the following:

1. Notice must be given to the news media that have filed a written request for such notice and to the official newspaper of the area or the news media most likely to give notice to the area served.
2. Notice shall set forth the time, date, place and subject matter of the meeting, including items intended for consideration at closed session.
3. Notice shall be given at least 24 hours prior to the meeting. If it is impossible to give such notice, a shorter notice may be given, but in no case may the notice be provided less than 2 hours in advance of the meeting.
4. Separate notices are to be given for each meeting of the Housing Agency.

### **Exemptions to the Open Meeting Law**

The Housing Agency may meet in closed session under one or more of the allowable exemptions. The closed session must be carried by a majority vote. Prior to the motion, the Chairperson of the Board must announce the nature of the business to be considered at the closed session, and the specific exemption or exemptions under which the closed session is authorized. This announcement shall become a permanent part of the minutes of the meeting. No business shall be taken up at any closed session except that which relates to matters contained in the Chairperson’s announcement of the closed session.

Closed meetings must be announced in advance. Requirements for convening a closed meeting and notice of a closed meeting are in the statute.

No elected or appointed member of the Housing Agency may be excluded from any meeting of the Board. Any member who knowingly attends a meeting in violation of the Open Meeting Law is subject to fines stipulated by the statute for each such violation.

### **Lobbying**

Housing Agencies may engage in lobbying activities and not violate applicable federal laws or regulations with the following considerations:

1. A Housing Agency may not use federal funds to pay lobbyists.
2. However, non-federal funds may pay for lobbying activities.
3. A Housing Agency is always permitted to educate and advocate for matters concerning the budget and issues related to activities of the Housing Agency.

## **APPENDIX**

### **Glossary of Definitions**

#### **Adjusted Income**

The Annual Income less allowable deductions and expenses.

#### **Affirmatively Furthering Fair Housing (AFFH).**

Under the AFFH regulation, HUD grantees that complete a Consolidated Plan for HUD's CPD block grant programs as well as Public Housing Agencies (PHAs) will complete an AFFH to accompany their 3-5 Year Con Plan or 5-Year PHA Plan. They may also work together with other grantees and PHAs to submit a joint AFFH. Members of the community will also have an opportunity to provide input for the Assessment of Fair Housing.

#### **Annual Contributions Contract (ACC)**

A federal contract entered into between HUD and Housing Agencies over a fixed period of time for annual debt service on project financing.

#### **Annual Income**

The anticipated total income to be received by an eligible family from all sources for a 12 month period following the date of determination of income.

#### **Budget Agency**

The total amount of yearly payments authorized for an assisted housing project/program. This represents the total long-term cost of project/program. It is the annual budget Agency times the number of years in the contract.

#### **Capital Fund Program (CFP)**

This is the program that makes funds available for physical and management improvements to public Housing Agencies.

#### **Community Development Block Grant (CDBG)**

The program which provides entitlement communities with direct grants that they can use to revitalize neighborhoods, expand affordable housing and economic opportunities, and/or improve community facilities and services, principally to benefit low to moderate income persons.

#### **Community and Housing Development Organization (CHDO)**

A federally- defined type of non-profit housing provider. The primary difference between a CHDO and other non-profits is the level of low-income resident participation on the Board of Directors.

#### **Congregate Housing**

An assisted independent living environment that offers those who are elderly or socially deprived, but otherwise in good health, the residential accommodations and supporting services they need to maintain or return to a semi-independent lifestyle and to prevent premature or unnecessary institutionalization as they grow older.

**Consolidated Plan**

Is a collaborative process whereby a community establishes a unified vision for community development actions. It offers local jurisdictions the opportunity to shape the various housing and community development programs into effective, coordinated neighborhood and community development strategies. It also creates the opportunity for strategic planning and citizen participation to take place in a comprehensive context, and to reduce duplication of effort at the local level.

**Contract Agency**

This is total dollar limit that HUD (or other federal agencies) can commit under contracts with developers (or other constituents) for a given program. (Established by congressional appropriations acts.

**Contract Rent**

The rent payable to the owner under the lease (contract), including the portion of rent payable by the family. In case of a cooperative, the term “contract rent” means charges under the occupancy agreements between the members and the cooperative.

**Cooperation Agreement – Public Housing**

This is a contract between a local Housing Agency and the governing body of the municipality in which the public housing project is located. It provides for the governing body to furnish municipal services and facilities to the Housing Agency and for the Agency, in turn, to make stipend payments in lieu of taxes to the municipality.

**Davis-Bacon Act**

An act passed in 1931, and subsequently amended, requiring that all laborers and mechanics employed in certain programs of federal financial assistance involving construction activities be paid wage rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The threshold is limited at \$2,000. All contracts over this amount must adhere to the prevailing wage.

**Davis-Bacon Wage Rates**

These are Federal wage rates set up by the Department of Labor. The Contract of Sale or Construction Contract must contain the applicable Davis-Bacon rates.

**Drug-Related Criminal Activity**

This is the possession, possession with intent to sell, illegal use or manufacture of a controlled substance.

**Elderly Household**

A family whose head or spouse, or whose sole member, is at least 62 years of age or disabled. It may include two or more elderly/disabled persons living together or one or more such persons living with another person who is determined to be essential to his/her care and well being.

**Emergency Shelter Grant (ESG)**

A federal grant program designed to help improve the quality of existing emergency shelters for the homeless, to make additional shelters available, to assist in operational costs, to provide social services to the homeless and to prevent homelessness.

**Equal Housing Opportunity Plan (EHOP)**

This is a requirement for encouraging minority participation in Section 8 Programs.

**Equal Opportunities Commission (EOC)**

A body created to enforce the rights of minority participation in housing and employment.

**Fair Housing & Equal Opportunity (FHEO)**

The Office of Fair Housing and Equal Opportunity administers federal laws and establishes national policies that make sure all Americans have equal access to the housing of their choice.

**Fair Market Rents (FMR)**

Rent schedules published annually in the Federal Register that include utilities (except telephones), ranges and refrigerators, parking and all maintenance, management and other essential housing services, which would be required to obtain, in a particular market area, privately developed and owned, newly constructed or substantially rehabilitated rental housing of modest design with suitable amenities.

**Family Self-Sufficiency (FSS)**

FSS is a program to promote economic and social self-sufficiency for public housing and Section 8 participants. It is intended to utilize existing community resources.

**Flat Rent**

Annually, tenants may elect to pay rent which is income based or the flat rent for a unit. Flat rent is set by the board of Commissioners but may not be less than 80% of the appropriate HUD published Fair Market rent for the area.

**General Occupancy**

Almost all of HUDs projects are considered General Occupancy. General Occupancy has determined everyone is qualified no matter the age. Preferences would need to be stipulated in the ACOP according to HUD regulations.

**Gross Rent**

This is the Contract Rent plus the utility allowance. If the tenant does not pay utilities, the Contract Rent is the Gross Rent.

**Housing Assistance Payment (HAP)**

The payment made to the owner of an assisted unit by HUD or the PHA as provided in the Contract. Where the unit is leased to an eligible family, the payment is the difference between the total housing expense and the total family contribution. (For section 8 only)

**Housing Assistance Payments Contract**

This is a written contract between the Housing Agency and the owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family. This contract defines the owner and PHA responsibilities. (For section 8 only)

**Housing Quality Standards (HQS)**

HQS is a federal minimum standard nationwide performance requirement for HUD-assisted housing. (For section 8 only)

**Low Income Family**

A family who's Annual Income does not exceed 80% of the median income for a locality as determined by HUD.

**Low Income Housing Tax Credits (LIHTC)**

LIHTC is a way of obtaining financing to develop low-income housing. Government programs provide dollar-for-dollar credit toward taxes owed by the housing owner. These tax credits can be sold, or used to back up bonds that are sold, to obtain financing to develop housing.

**Maintenance – Extraordinary**

This is to be established as a budget line item for work that is recurrent, is substantial in scope, and is performed in connection with specific work programs. Whether performed by the owner or regularly employed staff, specific labor force or under contract, the expenditure involved would otherwise materially distort the level trend of ordinary maintenance.

**Maintenance – Ordinary**

This is to be established as a budgeted line item for work that, regardless of scope, is a continuing function performed by the regularly employed staff, seasonal or part-time personnel, or under a maintenance contract, the expenditures for which allow a level trend year after year.

**Near Elderly**

Individual or family head over the age of 50.

**Operating Subsidy**

Subsidy paid by the federal government to a local Housing Agency to compensate for the limitation on rent of 30% of a tenant's adjusted monthly income. This is a result of the Housing & Urban Development Act of 1970. The operating subsidy funds the amount of the deficit between rents and expenses up to the difference between the annual contributions paid to the Agency by the federal government.

**Payment in Lieu of Taxes (PILOT)**

Payments of a sum of money by a tax-exempt or tax-excused property owner to a taxing Agency in amounts presumably commensurate with the cost of public services provided to such owner. PILOT should not exceed property tax values and PHAs can deduct any services as indicated on HUD form 52267. (See appendix for Statute information)

**Payment Standard**

This term applies to the Section 8 Housing Choice Voucher Program. It is set at 90-110% of the Fair Market Rent as established by the PHA and approved by their Board. The payment standard determines the maximum housing assistance payment allowable by bedroom size of the unit.

**Public Housing Assessment System (PHAS)**

A nationwide rating system for public Housing Agencies that assigns scores for the management of public housing and the financial management of the Agency.

**Real Estate Assessment Center (REAC)**

REAC's mission is to provide and promote the effective use of accurate, timely and reliable information assessing the condition of HUD's portfolio; to provide information to help ensure safe, decent and affordable housing; and to restore the public trust by identifying fraud, abuse and waste of HUD resources.

**Rental Assistance Demonstration (RAD)**

The Rental Assistance Demonstration was created in order to give public Housing Agencies (PHAs) a powerful tool to preserve and improve public housing properties and address the \$26 billion dollar nationwide backlog of deferred maintenance.

**Section 8 Existing Management Assessment Program (SEMAP)**

A nationwide rating system for public Housing Agencies administering the Housing Choice Voucher Program that assigns scores to various aspects of management of the program.

**Section 8 Housing Choice Voucher Program**

This is a rent subsidy program for low-income households under which HUD pays the difference between the local Payment Standard (as established by the PHA) and a designated percentage of household income. The program utilizes existing housing units. The PHA certifies tenants, inspects units for compliance with HQS and Rent Reasonableness, and contracts with landlords for subsidy payments.

**Single Room Occupancy (SRO)**

The Section 221(d) program provides mortgage insurance for multifamily properties consisting of single-room occupancy apartments. SRO's must provide human services as well as shelter.

**Substandard Housing**

A dwelling unit that is either dilapidated or unsafe, thus endangering the health and safety of the occupant, or that does not have adequate plumbing or heating facilities. For purposes of HUD-assisted housing, homeless households are deemed to be living in substandard housing.

**Total Tenant Payment (TTP)**

The total amount required to be paid by the tenant toward rent and utilities.

**Utility Allowance (UA)**

An amount determined by the PHA as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the family. Where the family pays directly for one or more utilities or services, the amount of the allowance is deducted from the Gross Rent in determining the Contract Rent and is included in the Total Family Contribution.



## **Violence Against Women Act (VAWA)**

### **VAWA Protections**

The Landlord may not consider incidents of domestic violence, dating violence or stalking as serious or repeated violations of the lease or other “good cause” for termination of assistance, tenancy or occupancy rights of the victim of abuse.

1. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of that abuse.
2. The Landlord may request in writing that the victim, or a family member on the victim’s behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under the VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

### **Very Low Income Family**

This is a low-income family whose annual income does not exceed 50% of the median income for the locality.

### **Violent Criminal Activity**

Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

## BY-LAWS

The By-Laws are the written rules that govern and define how a Housing Agency shall transact business and exercise its Agency and functions in its area of operation as defined by Nebraska Statutes and relevant federal directives.

The By-Laws should be reviewed for accuracy and revised to reflect changes in policy or Nebraska Statutes prior to each annual meeting. Revisions should be drafted and distributed to the Commissioners to review and approve.

The By-Laws are generally broken down into four parts of Articles, they are:

- **Article I – The Name of the Agency and Purpose**
- **Article II – The Officers and Commissioners**
- **Article III – The Meetings**
- **Article IV – Amendments**

In addition, an addendum is added to the By-Laws to cover important rule making by the Commission concerning its operations. Through the addendum, the Commission can establish important governing actions of the Commission that are not normally written in the context of the By-Laws.

The following By-Law is provided as a sample for the purpose of helping establish clear policy for the operation of the Commission. It is important that every member is given a copy of the By-Laws when they come on to the Board. The Commission should review the By-Laws once a year to keep everyone focused on the rules of governance for your Commission.

In addition, an addendum is added to the By-Law to cover important rulemaking by the Commission concerning its operations. Through the addendum, the Commission can establish important governing actions that are not normally written in the context of the By-Laws. These additional actions deal with the ethics of the Commission and are added because of the importance of ethics to the individual Commissioner and the operation of the organization. Subjects may include: Conflict of Interest; Conduct of a Commissioner; Conflict of Interest; The Staff; and Sanctions.

By-Laws are the most forgotten item of every Commission. Below is a sample By-Law structure:

### **Article I – Name and Purpose of Agency**

#### Section 1 – The Name of the Agency

The name of the Agency shall be (**State the full name of the Housing Agency**).  
The purpose of the Housing Agency, herein referred to as the Commission, is to promote and protect the health, safety, and welfare of the public within its jurisdiction (**State the purpose of the Agency as defined by your Commission**).

## Section 2 – The Seal of the Commission

The Seal of the Commission shall be in the form of a circle that shall be near the name of the Commission and the year of its organization.

## Section 3 – The Office of the Commission

The office of the Commission shall be at (**Insert address of Housing Agency office**), State of Nebraska. All meetings shall be held at this location unless the Commission approves, by resolution and in advance, other locations.

## Article II – The Officers and Commissioners

The Commissioners, meeting in an officially authorized session, shall constitute the Commission. All majority votes of the Commissioners present, at a meeting where there is determined to be a quorum at a Commission meeting, shall be final. The officers of the Commission shall be the Chairperson and Vice-Chairperson. The Commission shall ensure that the following positions are represented.

### Section 1 – The Chairperson: Duties

The Chairperson shall preside at all meetings, except where a Commissioner is appointed as chair of a subcommittee, and he/she shall be responsible for assuring the terms and conditions of the By-Laws and addendum are carried out. The Chairperson shall sign all contracts, deeds and other instruments between the organization and outside entities except as otherwise authorized, by resolution, by the Commission. The Chairperson shall have the responsibility of working with the Executive Director to assure that the agenda is established.

### Section 2 – The Vice-Chairperson

The Vice-Chairperson performs all duties of the Chairperson in his/her absence or incapacity; and in case of the resignation or death of the Chairperson, the Vice-Chairperson shall perform such duties as are imposed on the Chairperson until such time as the Agency shall select a new Chairperson. All other duties and responsibilities of the Vice-Chairperson shall, at the discretion of the Chairperson, be that of all other Commissioners on the commission.

### Section 3 – Secretary

The Secretary shall be the Executive Director or appointed person who is responsible for keeping and maintaining all books, records and documents of the Commission. The Secretary shall be responsible for all reporting to the Commission and assure that all reports are timely and complete; shall keep the Seal of the Commission and shall have the power to affix the seal to any documents authorized to be executed by the Commission.

### Section 4 – Treasurer

The Treasurer of the Agency shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such bank or banks as the Agency may select. The Treasurer shall sign all orders and checks for the payment of money. Except as otherwise authorized by Resolution of the Agency, all such orders and checks shall be countersigned by the Executive Director with a Board member appointed to be an alternate

signature for either. The Treasurer shall regularly review the books of accounts showing receipts and expenditures and shall render to the Agency at each regular meeting (or more often when requested), an account of the Housing Agency transactions and also the financial condition of the Agency.

#### Section 5 – Commissioner

The Commissioner upholds these By-Laws and all policies approved by the Commission. The Commissioner is responsible for attending all meetings and acts as a Commissioner only during official Commission meetings.

#### Section 6 – Resident as a Commissioner

A resident Commissioner has all of the same duties and responsibilities of a Commissioner.

#### Section 7 – Elections and Appointments

Elections of Chairperson and Vice-Chairperson shall be held at the annual meeting of the Commission and shall hold office for one year or until successors are elected and qualified. In the case of the Chairperson leaving permanently, the Vice-Chairperson shall take his/her place and elections shall take place at the next regularly scheduled meeting to fill the vacated Vice-Chairperson position.

#### Section 8 – Executive Director

The Executive Director is a salaried employee of the Agency. The Executive Director shall have general supervision over the administration of its business and affairs, subject to the direction of the Agency. The Executive Director shall be charged with the management of the housing projects of the Agency.

The Executive Director shall keep the records of the Agency, shall act as Secretary of the meetings of the Agency and record all votes, and shall keep a record of the proceedings of the Agency in a Journal of Proceedings to be kept for such purpose.

The Executive Director shall keep in a safe custody the seal of the Agency and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Agency. The Executive Director is authorized to execute instruments approved by the Agency

The compensation of the Executive Director shall be determined by the Agency. In the absence of the Executive Director, a temporary appointee shall be selected from among the Commissioners of the Agency and shall serve without compensation (other than the payment of necessary expenses). It is suggested that the compensation should be in comparability with the area City Clerk, local school principal or similar position and responsibilities.

The Executive Director is not an officer of the Agency.

#### Section 9 – The Commission’s Responsibility

The Commission shall make sure that all scheduled meetings start on time and are fully attended. It shall be the Commission’s responsibility to assure that the Executive Director

adheres to all policies of the Commission through written reports and other means of communications to them. The Commission shall establish policies from time-to-time to conform to Federal, State or local laws that are required that effect the operation of the Commission. The Commission shall assure that the staff is conforming to all contractual commitments that the Commission has entered into with both public and private contractors. The Commission shall modify, amend or create any new policy, as it deems necessary to assure that staff makes the most efficient and effective program delivery allowed by appropriate regulations.

#### Section 10 – Vacancies

When vacancies occur on the Commission, it is the responsibility of each Commissioner to seek new members for the Commission and submit their nominee’s name to the Chairperson. The Chairperson will submit the recommended names to the appointing official to fill the expired term or vacancy.

#### Section 11 – Additional Personnel

The Agency may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the Housing Agencies laws of Nebraska and all other laws of the State of Nebraska applicable thereto. The Agency shall determine the selection and compensation of such personnel (including the Secretary) subject to the laws of the State of Nebraska and federal regulations.

#### Section 12 – Additional Duties

The officers of the Agency shall perform such other duties and functions as may be required from time-to-time by the Agency or the by-laws or rules and regulations of the Agency

### **Article III – Meetings**

#### Section 1 – Annual, Regular, and Special or Committee Meetings

All meetings shall be conducted as prescribed in these By-Laws. The purpose of the meetings is to conduct the business of the Commission, in an open forum, as prescribed by these By-Laws and appropriate State laws, where applicable.

#### Section 2 – Notice of Meetings

Every meeting shall give public notice of the schedule of annual, regular, special and committee meetings at the beginning of each calendar year or fiscal year and shall state the regular dates, times, and place of such meetings. These schedules shall be prominently displayed in the main office and at each project site. Notice of all emergency meetings shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice. Notification to news media shall be given either by the policy of the Commission or at the written request of the news media.

### Section 3 – Annual Meeting

The purpose of the annual meeting is to conduct elections of the Officers and review this By-Law. Regular business of the Commission may be conducted immediately after the election and review of this By-Law.

### Section 4 – Regular Meeting

The purpose of the regular meeting is to conduct the business of the Commission, including gathering information and passing appropriate policy in an open forum.

### Section 5 – Other Meetings

The purpose of other meetings (special, reconvened, or emergency) is to conduct the business of the Commission where additional time or an emergency is declared by the Chairperson to conduct informational meetings and pass policy. An agenda shall be made and once notification is made no other form of business may be conducted.

### Section 6 – Call to a Meeting

The annual and all regularly scheduled meetings of the commission shall be on the **(E.g.: the 3<sup>rd</sup> Tuesday)** of each month at **(e.g.: 10:00 AM at the main office of the organization or at such other places as previously approved by the commission)**. A notice shall be made and displayed in all prominent place(s) as required by state law giving the dates of such meetings. Should this time be affected by a holiday, a new date shall be established before this schedule is finalized.

### Section 7 – Call to a Meeting: Other

The Chairperson may call for a special, reconvened, rescheduled or emergency meeting at any time. Any two members of the Commission may call for a meeting at any time. They will pass along their call for a meeting and an agenda to the Executive Director who will schedule and notify the other Commissioners and all appropriate persons of the meeting.

### Section 8 – Quorum

The power of the Commission shall be vested in the Commissioners in a duly authorized call to a meeting. A quorum shall require at least three of a five-member board or four of a six or seven-member board is present at the meeting.

## Section 9 – Order of Business

Robert’s Rules of Parliamentary Procedure shall be the guide for conducting all meetings of the Commission, and its officially sanctioned sub-committees. At the regular meeting of the Agency the following (suggested items) shall be the order of business:

1. Roll Call
2. Public Comment (5 mins)
3. Reading approval of the agenda
4. Reading approval of the minutes of the previous meeting
5. Bills/Review of Checks/ACH;’s
6. Report of the Secretary and/or Executive Director
7. Financial Reports
8. Reports of committees
9. Unfinished business/Action Items
10. Future Agenda Items
11. Adjournment

All resolutions shall be in writing and shall be copied in a journal of the proceedings of the Agency.

## Section 10 – Voting

The voting on all questions coming before the Commission shall be by roll call with the yea’s and nay’s entered upon the minutes of the meeting.

## Section 11 – Minutes

The recording of all open and closed meetings of the Commission and its sub-committees shall be kept in accordance with applicable requirements. The minutes shall be written so as to minimally include:

1. The date, the time and the place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of all matters proposed, discussed, or decided.
4. A record of any votes taken.

## **Article IV – Amendments to the By-Laws**

Amendments to the By-laws shall be made in a fully authorized meeting with a quorum present and voting to approve the amendment. All Commissioners shall be given a copy of the amendment prior to the meeting for review to discuss and/or pass the amendment.

# OATHS OF COMMISSIONERS – SAMPLE # 1

OATH OF OFFICE OF COMMISSIONER  
FOR THE  
\_\_\_\_\_ HOUSING AGENCY

I, \_\_\_\_\_, do solemnly swear (affirm) that I will support the Constitution of the United States, the Constitution of the State of Nebraska, and the By-Laws of the Commission and faithfully discharge the duties of Commissioner of the Housing Agency of \_\_\_\_\_, according to the law and the best of my judgment and ability so help me God.

I do further swear to be bound by the following:

1. I pledge myself to the professionalization of Housing Commissioners through my own efforts.
2. I pledge to view my service of the Housing Commission as an opportunity to serve my community because I support the mission of the Housing Agency to promote adequate and affordable housing, economic opportunity and a suitable living environment free from discrimination.
3. I pledge that I recognize my responsibilities are to serve in this capacity as a government official, a community leader, and an advocate for the Commission, its programs and objectives.
4. I pledge myself to place honesty, integrity, industriousness, compassion and understanding above all else; to pursue my gainful efforts by study and dedication to the end that service to the Housing Agency and the people I serve shall always be maintained at the highest possible level.

I, \_\_\_\_\_, a Notary Public in and for the County of \_\_\_\_\_, State of Nebraska, hereby certify that the above individual appeared to me and is personally known to me to be one of the Commissioners of the above stated Commission and appeared before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and taken the above oath.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

Notary Seal



## OATHS OF COMMISSIONERS – SAMPLE # 2

OATH OF OFFICE OF COMMISSIONER  
FOR THE  
\_\_\_\_\_HOUSING AGENCY

I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and State of Nebraska and will faithfully discharge the duties of the office of Commissioner of the Housing Agency of \_\_\_\_\_, according to the law and the best of my judgment and ability so help me God.

I do further swear to be bound by the following:

1. I pledge myself to the professionalization of Housing Commissioners through my own efforts and through the mutual efforts of my colleagues and by all other proper means available.
2. I pledge to view my service on the Housing Commission as an opportunity to serve my community, and my state and nation because I support the objectives of providing a decent, safe, and sanitary home and a suitable living environment for every American family.
3. I pledge that I recognize my responsibilities are to serve in this capacity as a government official, a community leader, and an advocate for the Commission, its programs and objectives.
4. I pledge myself to seek and maintain an equitable, honorable and cooperative association with fellow Public Housing Officials and all others who are concerned with the proper and professional management of Public Housing Developments.
5. I pledge to try to make decisions in terms of the most economical and efficient method toward the best interests of all citizens, particularly those of low and moderate income. Decisions will provide an equal opportunity to all citizens regardless of race, creed, sex, or age.
6. I will recognize that my responsibility is not to make the day-to-day management decisions of the Commission, but to see that it is well run by carrying out policy making, planning and appraisal functions and by providing direction and taking formal action in support of these functions.
7. I pledge to refuse to represent special interests or partisan politics or to use this Commission for personal gain or for the gain of friends or supporters. I recognize that, although, I have been appointed by the City/County Commission, my responsibility is to the entire community.
8. I pledge I shall not receive, directly or indirectly, any fee, rebate, commission, discount, gratuity or any other benefit whether monetary or otherwise for the proper professional discharge of my duties, except authorized established expenses and other benefits.
9. I will arrive at conclusions only after I have discussed matters fully with members of the professional staff and Commission members. Once the majority of the Commission assembled at a meeting has reached a decision, I will support it graciously.
10. I pledge to refer all complaints, including my personal criticisms, to the Executive Director and only after failure of administrative solution will pursue such matters outside the Commission while also recognizing the individual rights of a Commission as a citizen appointee and the responsibilities such appointment implies.

11. I pledge to observe and enforce local and state laws and regulations pertaining to the Commission and the housing that the Commission represents.
12. I pledge to respect the limited intent and scope of executive session and respect privileged communications from executive sessions and other sources for the privacy of the personnel and clients we are involved with.
13. I pledge myself to place honesty, integrity, industriousness, compassion and understanding above all else; to pursue my gainful efforts by study and dedication to the end that service to the Housing Agency and the people I serve shall always be maintained at the highest possible level.
14. I pledge to make diligent use of the time of the Commission as a whole and faithfully attend all meetings barring unforeseen conflicts in which case I shall promptly notify the Chairperson or his designee while respecting the rights and commitments of other Commissioners and the Housing Agency the Commission represents.
15. I pledge myself to comply with the rules and regulations and principals and this Code of Professional ethics.

\_\_\_\_\_  
Signature

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public of the State of Nebraska

My Commission expires \_\_\_\_\_

Notary Seal

## AGENCIES AND ASSOCIATIONS

### **U.S. Department of Housing and Urban Development – Nebraska State Office (HUD)**

Henry S. Reuss Federal Plaza  
310 West Nebraska Avenue  
Milwaukee, WI 53203-2289  
414-297-3214

[www.hud.gov/local/mil/](http://www.hud.gov/local/mil/)

### **National Association of Housing & Redevelopment Officials (NAHRO)**

630 Eye Street, N.W.  
Washington, D.C.  
877-866-2476

[www.nahro.org](http://www.nahro.org)

### **Nebraska Chapter of NAHRO (NE-NAHRO)**

9131 Mustang Drive  
Lincoln, NE 68507

[www.nenahro.org](http://www.nenahro.org)

### **Public Housing Agencies Directors Association (PHADA)**

511 Capitol Court NE  
Washington, DC 20002-4937  
(202) 546-5445

[www.phada.org](http://www.phada.org)

### **USDA Rural Development**

Federal Building, Suite308  
100 Centennial Mall North  
Lincoln, NE 68508  
(402) 437-5551

[www.rd.usda.gov/ne](http://www.rd.usda.gov/ne)

### **Nebraska Housing and Economic Development Agency (NDED)**

301 Centennial Mall South  
4<sup>th</sup> Floor  
Lincoln, NE 68508  
800-426-6505

<https://opportunity.nebraska.gov/ded-resources>

## What a Commissioner Needs to Know About HUD Reporting Systems

HUD has created an information gathering system in which Housing Agencies, inspectors and auditors submit reports. This same system provides resources to Housing Agencies. Acronyms are the key to using these systems. All reports are submitted via the online reporting system known as REAC.

WASS: Web Access Security Subsystem – Each user must obtain a WASS-ID to access the information or to submit a report. WASS is also known as REAC. The Executive Director must assign the rights to each user and to him/herself to access the WASS reporting systems.

REAC: Real Estate Assessment Center –Assesses the condition of HUD's portfolio by collecting information about the physical, financial, management and capital fund program compliance of each Housing Agency.

PASS: Physical Assessment Subsystem - Inspections of all HUD housing. REAC contracts with trained, independent inspectors who report the inspection results using standardized technology.

FASS: Financial Assessment Subsystem - Independent auditors report to REAC using standardized reporting format.

MASS: Management Assessment Subsystem – Standardized reporting using data collected during the year to evaluate occupancy, submission of tenant data reports and compliance with Public Housing regulations.

EIV: Enterprise Income Verification System – Provides information to a Housing Agency about tenant income. This information is gathered from employer tax reports and social security administration.

CFP: Capital Fund Program – Measures timely obligation and expenditure of HUD funds for capital improvements, management improvements and operations. Also measures occupancy

NASS: Integrated Subsystem – provides overall score for a Housing Agency. An overall score of 90% or better is rated a High Performer. A score between 60% and 90% is a Standard Performer.

PIC: Public Indian Housing Information Center – Housing Agencies electronically submit tenant information through PIC which tracks occupancy, tenant income reporting and program compliance.

SEMAP: Section 8 Management Assessment Program - A Housing Agency that administers the Section 8 tenant-based assistance program submits this report annually and is scored as high performer, standard performer or substandard performer.

eLOCCS: Line of Credit Control System (LOCCS) is the U.S. Department of Housing and Urban Development's (HUD) primary grant disbursement system, handling disbursements for the majority of HUD programs. **A separate eLOCCS User ID and password are required for both users and approving officials. A Commissioner must be the approving Official to authorize the Executive Director to “draw down” Operating funds.**

# Nebraska Open Meetings Law – Summary

## I. Policy of the Open Meetings Law

- Importance of having a public informed about governmental affairs.
- Importance of vigilant application of the law.
- DOJ will provide legal advice to government agencies regarding open meetings.
- Most violations occur by mistake.
- Open meetings law require all meetings of all state and local governmental bodies be publicly held in places reasonably accessible to members of the public and open to all citizens at all times unless otherwise expressly provided by law.

## II. Open Meetings Law Applies to Every Meeting of a Governmental Body

- Entities that are governmental bodies:
  - State or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule, or order. Includes advisory entities.
  - A formally constituted subunit of a governmental body is a governmental body. A subunit is a separate, smaller body created by a parent body and composed exclusively of members of the parent body.
- Entities that are not governmental bodies
  - Ad hoc gatherings/committees – as not created by law.
  - Government agency staff – doesn't satisfy definition (staff is individual subordinates within agency).
  - Government department with only a single member.
  - Bodies that are formed for or meeting for the purpose of collective bargaining with municipal or state employees.
  - Bodies created by the Court.
- A meeting is defined as the convening of members of a governmental body for the purpose of exercising the responsibilities, Agency, power or duties delegated to or vested in the body. The definition of a meeting applies whenever a convening of members of a governmental body satisfies two requirements:
  - There is a purpose to engage in governmental business; formal or informal; including discussion, decision or informational gathering on matters within the governmental body's realm of Agency.

- The number of members present is sufficient to determine the governmental body's course of action on the business under consideration.
  - Typically, governmental bodies operate under a simple majority rule in which a margin of one vote is necessary for the body to pass a proposal. Under simple majority rule, open meetings law applies whenever one-half or more of the governmental body members gather to discuss or act on matters within the body's realm of Agency.
- A meeting is not limited to all members being in the same place. Meetings by telephone or video conferencing qualifies as a convening of members if for the purpose of conducting governmental business and involves a sufficient number of members of the body to determine the body's course of action on the business under consideration.
  - Written communication transmitted by electronic means such as email or instant messaging may constitute a convening of members but due to the complexity of determining the communication to be a conversation or meeting, it is recommended to proceed with caution or avoid electronic communication in conducting governmental body business.
  - When a quorum of the members of one government body attend a meeting of another governmental body to engage in governmental business regarding a subject they have decision-making responsibility, it is considered two separate meetings and notice must be given of both meetings, although a single notice can be used if that notice clearly indicates that a joint meeting will be held and gives the names of each governmental body involved and published in each place where notices are published for the bodies.
  - A social occasion is not a place to conduct government business and it is strongly recommended to not talk about government body business at a social gathering.

### **III. Two Basic Requirements of Open Meetings Law – Advance Public Meeting Notice and Conducting Business in Open Session**

#### ***Public Meeting Notice Requirements***

- The chief presiding officer of a governmental body or the officer's designee is responsible for public meeting notification.
- Notice of each meeting must be given to the public, any members of the news media requesting it, and the official newspaper designated as the primary news source for the area.

- Meeting notice to be posted in one or more places likely to be seen by the general public. It is advised posting at three different locations within the jurisdiction that the governmental body services or with a paid notice within the jurisdiction. Nothing in the open meetings law prevents a governmental body from determining that multiple notice methods are necessary to provide adequate public notice of the body's meetings.
- Every meeting public notice must give the time, date, place, and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and news media thereof.
  - Information in the notice must be sufficient to alert the public to the importance of the meeting, so that they can make an informed decision whether to attend. Generic designations are not sufficient.
  - If a closed session will be held, the notice must contain the subject matter to be considered in closed session.
- Every public meeting notice must be given at least 24 hours in advance of the meeting, unless "for good cause" exists. Then notice should be given as soon as possible and must be given at least two hours in advance.
- A governmental body, when conducting a meeting, is free to discuss any aspect of any subject identified in the public notice of that meeting, as well as issues reasonably related to that subject, but may not address any topics that are not reasonably related to the information in the notice.
- There is no requirement that a governmental body must follow the agenda in the order listed on the meeting notice unless an agenda item has notices for a specific time.

### ***Open Session Requirements***

- All meetings shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times.
  - The policy of openness and accessibility favors governmental bodies holding meetings in public places rather than private premises. Generally speaking, places such as a private room in a restaurant are not considered reasonably accessible. A governmental body should not meet on private premises; and only in exceptional cases where the body has a specific reason for doing so that does not compromise the public's right to information about governmental affairs.
  - The policy of openness and accessibility also requires that governmental bodies hold meetings at locations near to the public they serve.
- The law also requires that the meeting location also be accessible for those with disabilities. The Americans with Disabilities Act and other federal

laws may also require governmental bodies to meet accessibility requirements that exceed the requirements imposed by Nebraska's open meetings law.

- All meetings must be initially convened in open session. All business of any kind, formal or informal, must be initiated, discussed, and acted upon in open session, unless business falls under one of the exemptions set forth in Nebraska State Statutes.
- The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session. It also grants citizens the right to tape record or videotape open session meetings as long as doing so does not disrupt the meeting.
  - The law does not permit recording of an authorized closed session.
  - The open meetings law grants citizens the right to attend and observe meetings of governmental bodies that are held in open session but does not require a governmental body to allow members of the public to speak or actively participate in the body's meeting. Unless a statute specifically applies, a governmental body is free to determine for itself whether and to what extent it will allow citizen participation at its meeting.
  - There are some other state statutes that require governmental bodies to hold public hearings on specified matters.
  - Although not required, the open meetings law does permit a governmental body to set aside a portion of an open meeting as a public comment period.
    - Such a period must be included on the meeting notice.
    - During this period, the body may receive information from the public and may discuss any matter raised by the public.
    - If a member raises a subject that is not on the agenda, it is advisable to limit the discussion of that subject and to defer any extensive deliberation to a later meeting so that more specific notice can be given.
    - The body also may not take formal action on a subject raised in the public comment period unless that subject is also identified in the meeting notice.
- No secret ballots may be used to determine any election or decision of a governmental body, except the election of officers of a body.
  - If a member of a governmental body requests that the vote of each member be recorded on a particular matter, a voice vote or a vote by a show of hands is not permissible unless the vote is unanimous and the minutes reflect who is present for the vote.



- The open meetings law requires a governmental body to create and preserve a record of all motions and roll-call votes at its meetings. This requirement applies to both open and closed sessions.
  - As long as the body creates and preserves a record of all motions and roll-call votes, it is not required by the open meetings law to take more formal or detailed minutes of other aspects of the meeting.
  - Other statutes outside the open meetings law may prescribe particular minute-taking requirements for certain governmental bodies and officials that go beyond what is required by the open meetings law.
  - The general legislative policy of the open meetings law is that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business; provide the public with a reasonably intelligible description of the essential substantive elements of every motion made, who initiated and seconded the motion, the outcome of any vote on the motion, and if a roll-call vote, how each member voted.
  - Nothing in the open meetings law prohibits a body from making decisions by general consent, without a formal vote. Whether a decision is made by consensus or other method, Nebraska statute requires the body to create and preserve a meaningful record of that decision.
  
- All meeting records, open and closed, must be open to public inspection to the extent prescribed in the state public records law unless the particular record at issue is subject to a specific statutory exemption or the custodian concludes that the harm to the public from its release outweighs the benefit to the public.
  - As long as the reasons for convening in closed sessions continue to exist, the custodian may be able to justify not disclosing any information that requires confidentiality and would separate information that can be made public from that which cannot, and disclose the former. Once the underlying purpose for the closed session ceases to exist, all records of the session must then be provided to any person requesting them.

#### **IV. Closed Session Requirements**

- If closed session is contemplated at the time public notice is given, the notice must contain the subject matter of the closed session.
  - If closed session is not contemplated at time of public notice, that does not foreclose a government body from going into closed session to discuss an item contained in the notice.
  - In both situations, a governmental body must follow the procedure set forth in Nebraska statute before going into closed session.

### ***Procedure for Convening in Closed Sessions***

- Meeting must initially be convened in open session.
- Governmental body must pass a motion, by recorded majority vote to convene in closed session.
  - If unanimous motion, no requirement to record votes individually.
  - Before governmental body votes on the motion, the chief presiding officer must announce and record in open session the nature of the business to be discussed and the specific statutory exemption that is claimed to authorize the closed session.
- If several exemptions are relied on to authorize a closed discussion of several subjects, the motion should make it clear which exemptions correspond to which subjects.
- The governmental body must limit its discussion in closed session to the business specified in the announcement.
- Nebraska Statute contains 13 exemptions to the open session requirement that permit, but do not require a governmental body to convene in closed session.
  - See Nebraska Open Meetings Law Compliance Guideline for detailed information on the exemptions.
- The open meetings law gives wide discretion to a governmental body to admit, into a closed session, anyone whose presence the body determines is necessary for the consideration of the matter that is the subject of the meeting.
- A governmental body vote should occur in open session unless the vote is clearly an integral part of deliberations authorized to be conducted in closed sessions under Nebraska statutes (should vote in open session unless doing so would compromise the need for the closed session).
- A governmental body may not commence a meeting, convene in closed session, and subsequently reconvene in open session within 12 hours after completion of a closed session unless public notice of the subsequent open session is given “at the same time and in the same manner” as the public notice of the prior open session.

## **V. Open Meetings Law Enforcement and Penalties**

### ***Enforcement***

- Both the Attorney General and the district attorneys have Agency to enforce the open meetings law.

- A district attorney has Agency to enforce the open meetings law only after an individual files a verified meetings law complaint with the district attorney.
  - The verified complaint must be signed by the individual and notarized and should include available information that will be helpful to investigators:
    - Identifying the governmental body and any members thereof alleged to have violated the law.
    - Describing the factual circumstances of the alleged violations.
    - Identifying witnesses with relevant evidence.
    - Identifying any relevant documentary evidence.
- An enforcement action brought by a district attorney or by the Attorney General must be commenced within six years after the cause of action accrues or be barred.
- Proceedings to enforce the open meetings law are civil actions subject to the rules of civil procedure, rather than criminal procedure, and governed by the ordinary civil standard of proof.
  - Open meetings law enforcement action is commenced like any civil action by filing and serving a summons and complaint.
  - Open meetings law cannot be enforced by the issuance of a citation because citation procedures are inconsistent with the statutorily-mandated verified complaint procedure.
- If the district attorney refuses to commence an open meetings law enforcement action or otherwise fails to act within 20 days of receiving a complaint, the individual who filed the complaint has a right to bring an action, in the name of the state, to enforce the open meetings law.
- Although an individual may not bring a private enforcement action prior to the expiration of the district attorney's 21 day review period, the district attorney may still commence an action even though more than 20 days have passed. It is not uncommon for the review and investigation of open meetings complaints to take longer than 20 days.
- Court proceedings brought by private relators to enforce the open meetings law must be commenced within two years after the cause of action accrues or the proceedings will be barred.

### ***Penalties***

- Any member of a governmental body who knowingly attends a meeting held in violation of the open meetings law, or otherwise violates the law, is subject to a forfeiture of between \$25 and \$300 for each violation.
  - The Nebraska Supreme Court has defined knowingly as not only positive knowledge of the illegality of a meeting, but also awareness of the high probability of the meeting's illegality or conscious avoidance of awareness of the illegality.
- A member of a governmental body who is charged with knowingly attending a meeting held in violation of the law may raise one of two defenses:
  - That the member made or voted in favor of a motion to prevent the violation.
  - That the member's votes on all relevant motions prior to the violation were inconsistent with the cause of the violation.
  - A member who is charged with a violation other than knowingly attending a meeting held in violation of the law may be permitted to raise the additional statutory defense that the member did not act in his or her official capacity.
  - A member of the body can avoid liability if he or she can factually prove that he or she relied, in good faith and in an open and unconcealed manner, on the advice of counsel whose statutory duties include the rendering of legal opinions as to the actions of the body.
- A governmental body may not reimburse a member for a forfeiture incurred as a result of a violation of the law, unless the enforcement action involved a real issue as to the constitutionality of the open meetings law.
- In addition to the forfeiture penalty, Nebraska Statute provides that a court may void any action taken at a meeting held in violation of the open meetings law if the court finds that the interest in enforcing the law outweighs any interest in maintaining the validity of the action.

### **Agency Plans and Annual Plans**

All PHAs must develop a five-year agency plan that states the PHA's mission, goals, and objectives. The Plan must be submitted to HUD 75 days before the state of its fiscal year. Section 8 agencies will need to create an Administrative Plan or Tenant Selection Plan that depicts local policies and procedures for their program.

Tenant selection plans are not submitted to HUD yearly. An annual plan must be submitted yearly and contain the following:

Strategies for meeting the needs of low-income and very low-income individuals and families

Distribution of financial resources

Eligibility, selection, and admission policies

Waiting list

Policy for the deconcentration of lower-income families

Management and operations

Capital Improvements needed to ensure longevity of the housing stock and program

Demolish or disposed of properties timetables

Designated preference or housing plans for elderly and disabled families

Conversion of public housing including RAD

Analysis of units the PHA is required to convert to tenant-based assistance

Assistance to be used with conversions

Descriptions of any other programs such as homeownership, Rural Development

Descriptions of all programs relating to community service and self-sufficiency along with the community service requirements

Description of security measures to ensure safety to residents and cooperation agreements with local police departments

Pet Policy

Civil Rights certification

Audit results

Asset Management

Any regulation changes that are required to be included

## **ACRONYMS**

### **U. S. DEPT OF HOUSING AND URBAN DEVELOPMENT**

**AAF** – Annual Adjustment Factor, a Section 8 program factor published by HUD that is used to compute rent increases.

**ACC** – Annual Contributions Contract, Agreement between a housing agency and HUD, which allows annual payments to the PHA.

**AEL** – Allowable Expense Level, an amount initially established by HUD that is updated each year as part of the PFS formula.

**AM** – Asset Management (Asset Based Management)

**CDBG** – Community Development Block Grant, HUD grant to designated entitlement cities.

**CFP** – Capital Fund Program, a HUD program to provide funds on an annual basis to improve the physical condition and upgrade management and operations of public housing developments.

**CFR** – Code of Federal Regulations, statutory provisions, which govern HUD and other programs, administered by Federal agencies, published April 1st of each year.

**CGP** – Comprehensive Grant Program, a HUD program to provide funds on an annual basis to improve the physical condition and upgrade management and operations of public housing developments.

**CIAP** – Comprehensive Improvement Assistance Program, a competitive HUD program for the same purposes as CGP.

**EEOC** – Equal Employment and Opportunity Commission, a commission that enforces Federal civil rights laws prohibiting employment discrimination.

**FASS** – Financial Assessment Subsystem, a web system designed for REAC to measure the financial condition of PHAs.

**FDS** – Financial Data Schedule, HUD’s standardized financial statement form submitted electronically to REAC by PHAs.

**FHEO** - Fair Housing and Equal Opportunity, a division of HUD that enforces the Fair Housing Act and other civil rights laws to ensure the right of equal housing opportunity and the right to fair housing choice without regard to race, color, age, religion, sex, national origin, disability or family composition.

**FMC** – Financial Management Center, HUD’s centralized Section 8 financial processing center for PHA’s.

**FMR** – Fair Market Rent, a rent limit published in the Federal Register for Section 8 rental assistance.

**FSS** – Family Self-Sufficiency, a HUD program designed to promote self-sufficiency by providing supportive services through public and private resources for families receiving Section 8 tenant based or public housing assistance.

**GAAP** – Generally Accepted Accounting Principles, a widely accepted method of accounting that HUD now requires PHA’s to use.

**GAO** – General Accounting Office, an investigative arm of Congress, which oversees Federal programs and operates to assure accountability to the American people.

**HA** – Housing Agency/Agency, any state, county, or municipality or other governmental entity or public body that is authorized by State Law to engage in or assist in the development or operation of housing for low-income families.

**HAP** – Housing Assistance Payment, the amount the HA pays the owner for a unit occupied by a Section 8 tenant.

**HQS** – Housing Quality Standards, the minimum quality standards a unit must meet to be allowed housing assistance from HUD for the Section 8 Program.

**HUD** – Department of Housing and Urban Development, a department of the Federal government whose mission is to provide decent, safe, sanitary home and suitable living environment for every American.

**LBP** – Lead-Based Paint, a paint manufactured before 1978 and is harmful to individuals who ingest it.

**LOCCS** – Line of Credit Control System, A HUD database that monitors all HUD disbursements, allows PHA’s to draw down grant funds and allows the HUD Field Office to monitor PHA obligation and expenditure progress against funds disbursed by HUD.

**MASS** – Management Assessment Subsystem, also referred to as Management Operations Certification, is an assessment of a PHA’s management capability based on detailed information submitted electronically to the REAC.

**MTCS** – Multifamily Tenant Characteristic System, A HUD national computer database that collects, maintains and reports information on families who participate in the Housing Choice Voucher and Public Housing Programs.

**OGC** – Office of General Counsel, legal counsel for HUD.

**OIG** – Office of the Inspector General, a division of the Federal Government which ensures the integrity, efficiency, and effectiveness of HUD operations.

**OMB** – Office of Management and Budget, a division of the Federal Government which assists the President in the development and resolution of all budget, policy, legislative, regulatory, procurement and management issues.

**OSHA** – Occupational Safety and Health Administration, a division of the Federal Government that provides safety guidelines.

**PASS** – Physical Assessment Subsystem, also known as the Physical Inspections, is an annual physical inspection program of public housing units.

**PBB** – Project Based Budgeting

**PBM** – Project Based Management

**PEL** – Project Expense Level

**PFS** – Performance Funding System, HUD formula used to determine the annual operating subsidy eligible for PHA’s.

**PHA** – Public Housing Agency/Agency, see HA

**PHMAP** – Public Housing Management Assessment Program, replaced by PHAS

**PHAS** – Public Housing Assessment System, provides for the assessment of the physical condition, financial health, management operations and resident services in public housing. Its purpose is to enhance public trust by creating a comprehensive management tool that effectively and fairly measures a PHA’s performance based on standards that are objective, uniform and verifiable.

**PIC** – Public and Indian Housing Information Center, a HUD database, which provides PHAs an electronic source to submit required funding data to HUD.

**PUM** – Per-Unit-Per-Month, an amount derived by dividing a dollar amount to the unit months available.

**PILOT** – Payment in Lieu of Taxes, instead of taxes, the lump sum payment made to local government(s) by PHAs.

**QHWRA** – Quality Housing and Work Responsibility Act, a law passed in 1998 enacted landmark measures that constituted a substantial overhaul of HUD’s public housing and Section 8 assistance programs.

**RAB** – Resident Advisory Board, a board consisting of individuals who adequately reflect and represent the residents assisted by the PHA.

**RFP** – Request for Proposals, a formal request for competitive bids.

**REAC** – Real Estate Assessment Center, HUD’s centralized management center to assess performance by PHAs.

**SEMAP** – Section Eight Management Assessment Program, measures a PHA’s performance in the Section 8 Housing Choice Voucher tenant-based assistance program.

**TANF** – Temporary Assistance for Needy Families, program administered by Department of Human Services that provides payments for families with needy children under age.

**TEVS** – Tenant Eligibility Verification System, on-line program by which PHAs can confirm the amount of funds received by residents under the Social Security or the Supplemental Security Income (SSI) Program.

**TTP** – Total Tenant Payment, total amount tenant is required to pay toward rent and utilities under HUD assisted programs.

**UA** – Utility Allowance, an estimate of average monthly utility bills used by HUD in the calculation of rent.

**UMA** – Unit Months Available, PHA’s units multiplied by the number of months the units are available for occupancy in a given PHA fiscal year.

**UPCS** – Uniform Physical Condition Standards, the minimum quality standards a Public Housing unit must meet to be allowed housing assistance from HUD.