



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of:
Regional and Field Office Directors of Public
Housing; Section 8 Financial Management Center;
Public Housing Agencies Administering Housing
Choice Voucher and Public Housing Programs;
Owners/Agents; Resident Management Corporations;
Resident Councils;

Notice PIH-2009-41 (HA)

Issued: October 5, 2009

Expires: October 31, 2010

References: 24 CFR 5.110

Subject: Processing requests for regulatory waivers.

1. Purpose

This notice provides instructions for submitting requests for regulatory waivers in compliance with the Department of Housing and Urban Development (HUD) Reform Act of 1989. Waivers are relief from strict regulatory compliance upon a finding of good cause, subject to statutory limitations and waiver procedures pursuant to 24 CFR 5.110.

This notice replaces any previous guidance that permitted public housing agencies (PHAs) to submit waiver requests directly to HUD Headquarters (HHQ) program offices. Waiver requests received outside of this process are to be returned to the PHA initiating the request. These procedures do not apply to PHAs in Presidentially-declared disaster areas during a HUD stipulated time frame for regulatory relief.

2. Background

The authority to grant waivers of regulations administered by Public and Indian Housing (PIH) is delegated to the Assistant Secretary for PIH. On a quarterly basis, approved waivers are compiled for *Federal Register* publication pursuant to the HUD Reform Act of 1989.

3. Process

Regulatory waivers are processed in four steps:

- 1) PHA initiation of request with good cause justification,
- 2) Field Office checklist review and recommendation,
- 3) HHQ Program Office recommends final determination for approval by Assistant Secretary,
- 4) HHQ Program Office preparation of Federal Register summary.

The process for PHAs regulatory waiver requests is managed by SharePoint, a server program under 2007 Microsoft Office System, as outlined Attachment A. The SharePoint portal for regulatory waivers is posted at: <http://hudsharepoint.hud.gov/sites>. However, access is restricted to persons granted access through the Office of Field Operations.

Each HHQ program office is responsible for securing concurrence from the Office of General Counsel (OGC) and, if the PHA is in judicial or administrative receivership, concurrence from the Office of Receivership and Oversight (ORO).

Attachment B shows the SharePoint file for PHAs. This format serves as the master file for each waiver request. The SharePoint file includes the checklist and recommendation options to be completed by the field office. The SharePoint file also includes the waiver disposition and Federal Register summary to be completed by the HHQ program office once a determination on the disposition of the waiver is completed by the Assistant Secretary for PIH.

The process for regulatory waivers through the Office of Public Housing Investments (OPHI) does not require field office processing. Under the mixed-finance program pursuant to 24 CFR 941 subpart F, PHAs developing a mixed-finance project must submit a proposal and evidentiary documents to OPHI. OPHI will assign an OPHI grant manager to work with the PHA to attain HUD approval for the project. Waivers for mixed-finance projects will be reviewed and processed by OPHI. Field offices are not responsible for processing or tracking these waivers. A mixed-finance project may require one of the following: identity of interest waiver to allow the project's developer to also be its general contractor, evidentiary review waiver to allow for a streamlined review process, or waiver of total development cost (TDC) limits to allow for higher construction costs. For these waivers, Attachment C is used by OPHI to enter waiver requests into SharePoint.

PHAs seeking a regulatory waiver under the remaining subparts of 941 submit the waiver request to their field office and follow the process outlined in Attachment A.

4. Quarterly Reports

On a quarterly basis, the Office of Program, Policy and Legislative Initiatives (OPPLI) and the HHQ program offices prepare reports of approved waivers for *Federal Register* publication processed through the Office of General Counsel.

5. Further Information

For information on the need for a regulatory waiver or on how to process a regulatory waiver request, please contact your appropriate field office. As noted under Item 1, waiver requests received outside of this process are to be returned to the PHA initiating the request.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing

Attachment A

Regulatory Waiver Process for Public Housing

Step 1	PHA identifies regulation that requires a waiver, presents justification to meet good cause pursuant to 24 CFR 5.110 and transmits request to appropriate field office.
Step 2	In SharePoint, the field office opens a file using the regulatory waiver form from the Documents Library, names the new file by the PHA and date of the PHA request and scans the PHA request into the file. Field office completes the checklist, adds a recommendation and forwards to HHQ. Waivers of identity of interest, evidentiary review or total development costs limits for mixed-finance projects are processed by OPHI and do not require a field office recommendation.
Step 3	HHQ program office prepares PIH final determination, forwards for OGC concurrence and submits for execution by A/S for PIH. If the requesting PHA is in receivership, then the program office forwards to the Office of Receivership and Oversight (ORO).
Step 4	Once executed, the Office of the Assistant Secretary scans final waiver determination into SharePoint file and distributes determination to the requesting PHA and/or appropriate field office. Program office prepares summary of the waiver request following the format in SharePoint for Federal Register publication and Notifies the Office of Program, Policy and Legislative Initiatives that the waiver process is complete.

PHA Name and Number:

Date of PHA request:

Regulatory Waivers

PIH Notice XX-2009 presents the requirements, background and process for regulatory waivers. Once a field office (FO) receives a regulatory waiver request from a public housing agency (PHA), the FO creates a SharePoint file using this page to format the master file for the PHA's request. The FO reviews the waiver request and forms a recommendation:

Field Office Checklist

PHA address

Is PHA in Receivership: _____

PHA Contact:

Is PHA in a Presidentially-declared disaster area: _____

Regulation from which waiver is requested:

Field Office Reviewer:

Date of Review:

The field office confirms the regulatory reference for the waiver request. Statutory obligations cannot be waived. Add additional comments if further clarification is needed. Waivers on identity of interest, evidentiary reviews or total development costs under 24 CFR 941 do not require a field office recommendation.

___ Has the PHA demonstrated good cause pursuant to 24 CFR 5.110?

___ Does the request reference the proper regulation?

___ Does the request cause an Annual Contributions Contract (ACC) amendment?

Recommendation: ___ Approve ___ Deny ___ Approve with the following condition:

Waiver to be processed by the following program office(s):

___ PH Management

___ REAC

___ PH Investments

___ Voucher Management

___ ONAP

___ Field Operations

___ OPHI for waivers outside of Subpart F of 24 CFR 941

Field Office alerts the appropriate HHQ Program Office that the above process is completed. For tracking purposes, forward each waiver request to PIH's Correspondence Unit at HHQ.

Program Office:

Program Office is responsible for securing concurrence from the Office of General Counsel (OGC) and the Office of Receivership Oversight (ORO) if the PHA is in receivership.

Program Office Approval Date:

Program Office Contact Person:

If Program Office denies the request, enter date and reason for denial:

The Program Office notifies the Office of Policy Program and Legislative Initiatives (OPPLI) that the waiver is executed and completes the following summary of approved waivers for Federal Register publication:

Regulation:

Project/Activity:

Nature of Requirement:

Granted by:

Date Granted:

Reason Waived:

Office of the Assistant Secretary: Enters copy of final approval into SharePoint.

Regulatory Waivers for OPHI

PIH Notice XX-2009 presents the requirements, background and process for regulatory waivers. Once the Office of Public Housing Investments (OPHI) receives a letter requesting a waiver request from a public housing agency (PHA) for a mixed-finance project, the Deputy Assistant Secretary or Director of the Office of Urban Revitalization forwards this request to the OPHI SharePoint Contact Person (OPHI Contact). The OPHI Contact creates a SharePoint file using this page to format the master file for the PHA's request.

Project Information

PHA name:

Project name:

Nature of Request

Date of Letter:

Regulation from which waiver is requested:

Is good cause presented pursuant to 24 CFR 5.110?

Assignment of Request

Grant manager/reviewer of waiver request:

Date of assignment:

OPHI is responsible for forwarding the waiver request to the Office of General Counsel (OGC) for concurrence.

Program Office Action

OPHI Approval Date:

If OPHI denies the request, enter date and reason for denial:

When a waiver is granted, OPHI will complete the following summary of the approved waiver and forward it to the Office of Policy, Planning and Legislative Initiatives for Federal Register publication:

Regulation:

Project/Activity:

Nature of Requirement:

Granted by:

Date Granted:

Reason Waived: