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GENERAL NEWS

Court Postpones Implementation of New Disparate Impact Rule

On September 24, the Department of Housing and Urban Development (HUD) published a [final rule](#) in the *Federal Register* amending its interpretation of the [Fair Housing Act's](#) disparate impact standard. The rule was meant to become effective yesterday, October 26. However, on October 25, a judge of the United States District Court for the District of Massachusetts issued an [order](#) postponing the effective date implementing the final rule due to a civil motion filed by Massachusetts advocacy organizations detailing the variety of ways in which the plaintiffs allege that the rule is unlawful.

The new rule instituted various changes, including requiring that a charging party "sufficiently plead facts" to support a variety of criteria set out under the rule and prove by the preponderance of evidence that these criteria are met. [Prominent organizations](#) had previously spoken out against the proposed rule, and multiple comments from the proposed rule comment period expressed concern that the final rule may not be compliant with the 2015 U.S. Supreme Court ruling in [Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.](#) or fair housing protections more broadly. However, HUD stated that the final rule "provides greater clarity of the law for individuals, litigants, regulators, and industry professionals."

The court is postponing the effective date of the final rule pending conclusion of the review proceedings. To read the order, click [here](#).

PIH Issues Notice on Energy Conservation Program for Small, Rural PHAs

Yesterday HUD's Office of Public and Indian Housing (PIH) issued Notice [PIH 2020-30](#) to provide guidance to PHAs on the implementation of Section 209 (b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act). Specifically, the notice provides guidance on the use and eligibility requirements for the Small Rural Frozen Rolling Base (SR-FRB) program, which would allow eligible PHAs to freeze their three-year rolling base consumption level (RBCL) that is used to calculate operating fund grants.

To be eligible, PHAs must meet the definition of both small and rural at the time they enter the SR-FRB program, as defined by the Economic Growth Act. HUD defines *small rural PHA* as a PHA that administers 550 or fewer combined public housing units and vouchers under Section 8, and has a primary administrative building with a physical address in a rural area or more than 50 percent of its combined public housing and Section 8 units are in a rural area. A list of eligible small rural PHAs is available [here](#). Highlights of the notice include the following:

- PHAs will be able to freeze consumption using the average annual consumption for the most recent three-year period for a period of up to 20 years.
- All cost savings will go to the PHA and may be used for any eligible public housing purpose, including any capital fund or operating fund expense, at the PHA's discretion.
- Savings, as defined in the notice, are the amount of additional operating funds a PHA may receive in any given year as a result of participating in the SR-FRB program. If a PHA uses savings for eligible capital fund expenses, it must maintain documentation to identify the savings amount and the activities those funds were spent on. Any funds not expended by the account cancellation date must be returned to HUD.
- To apply, the PHA must notify HUD at PIH_Energy@hud.gov no later than July 1 of the year before they want to start the program. For instance, to start the program in 2022, the notification must be received by HUD no later than July 1, 2021. For 2021, the time frame and process to submit the notification will be identified in the calendar year 2021 Operating Fund Grant Processing Notice.
- The notification date is also the deadline for notifying HUD of any changes to program participation including, but not limited to, entering the program, adding a utility, exiting the program, or any other adjustments identified in the notice.
- For each utility included, the PHA needs to identify whether the utility is the primary source of heat at the project and if the PHA will make an adjustment to the historical consumption for Heating Degree Days (HDD) to account for weather variations.
- Participating PHAs must identify both the project and the utilities to freeze. PHAs have the flexibility to participate with one or more projects and may elect to freeze one or more eligible utilities within each project.
- PHAs have the option to undertake financing for energy or water conservation improvements while participating in the SR-FRB program, however, if the financing involves a security interest or other impediment in a public housing property, PHAs are required to obtain written approval from HUD.
- PHAs have a choice to participate in either the SR-FRB program or the Energy Performance Contracting (EPC) program for any project, however, they can't receive incentive payments from both programs for the same project in the same year.

Further details can be found in the [notice](#).



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