ALBUQUERQUE HOUSING AUTHORITY

Empowering people in our community through affordable housing and self-sufficiency opportunities

To: AHA Board of Housing Commissioners

From: Linda Bridge, Executive Director

Date: October 2, 2017

Re: Executive Communication 2017-05 - Participation in Operating Reserve Offset Litigation

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Background:
In 2012, the United States Department of Housing and Urban Development (HUD) imposed nationwide an operating reserve offset for those local Public Housing Agencies (PHAs) which had accumulated a large amount of operating reserve funding. This resulted in local PHAs receiving disproportionate amounts of operating subsidy across the country, anywhere from 0 to 94.97 percent of their formula subsidy that year. In response, a group of PHAs sued HUD in 2013 in a class action lawsuit alleging the agency failed to follow the law on distributing operating subsidies to the PHAs. HUD argued their actions were justified by the 2012 Appropriations Act. In the first lawsuit, the U. S. Court of Federal Claims in Washington, D.C. ruled that HUD had breached the terms of the Annual Contributions Contracts (ACC) between HUD and PHAs when it failed to comply with a federal requirement that any nationwide reductions to operating subsidies paid to the PHAs be applied on a pro rata basis. As a result of the favorable ruling in the first round of litigation, which HUD did not appeal, 309 PHAs across the country will be receiving money damages.

The Public Housing Authorities Directors Association (PHADA) and National Association of Housing and Redevelopment Officials (NAHRO) helped to organize the first lawsuit against HUD. Both associations have now jointly reached out to PHAs (like AHA) that were not involved in the first class action lawsuit to be part of a second class action lawsuit to recover money damages owed by HUD to each PHA (correspondence from these agencies is attached). The estimated amount of money damages the AHA is eligible to receive in this second lawsuit is $523,690. The only cost to the AHA to join in the second class action lawsuit is a onetime fixed fee payment of upfront legal fees in the amount of $3,000.

Discussion:
Given the success of the first lawsuit, the second lawsuit is anticipated to move relatively quickly. The risks to AHA appear to be minimal, especially considering the potential to recover over $500,000 in damages. The submission deadline was September 29, 2017. To preserve the ability of AHA to participate in the second class action lawsuit, a letter of interest and a check for the fixed legal fee was mailed before the deadline. The payment of the legal fees came from AHA's non-federal funds.

Recommendation:
Requesting approval from the Board for the AHA to participate in the operating reserve offset litigation against HUD and to affirm the previous action taken by the Executive Director to have AHA join the case.

By voting to formally approve receipt of this Executive Communication, the AHA BOARD OF HOUSING COMMISSIONERS, the governing body of the AHA does:

1. Approve of the AHA participating in the operating reserve offset litigation against HUD
2. Affirms the previous action taken by the Executive Director to have AHA join the case
3. Authorizes the Executive Director to take any additional actions to participate in the litigation

PASSED and ADOPTED this 2nd day of October, 2017.
BY A VOTE OF 3 FOR, AND 0 AGAINST.

Members Absent: Stephen J. Vogel, Roxanne Rivera-Wiest
Members voting against: _____

ALBUQUERQUE HOUSING AUTHORITY
BOARD OF HOUSING COMMISSIONERS

By: _____
Janet McHard, Vice Chairperson of the Board

ATTEST:

_____
Linda Bridge, Secretary to the Board and Executive Director