

Enquiries: Alison Tshangana
Tel: 012 369 8000 / 083 280 259
E-mail: atshangana@salga.org.za

CIRCULAR 17/2017

FROM : CHIEF EXECUTIVE OFFICER

TO : MUNICIPAL MANAGERS

DATE : 14 AUGUST 2017

INVITATION TO COMMENT ON DRAFT REVISED NATIONAL ACCREDITATION AND ASSIGNMENT FRAMEWORKS FOR MUNICIPALITIES TO ADMINISTER NATIONAL HUMAN SETTLEMENTS PROGRAMMES

The purpose of this Circular is to update you on the progress with regard to the revision of the *National Accreditation and Assignment Frameworks* for housing; to outline the defining features of the proposed draft document; to share SALGA's preliminary position; and to invite your municipal comments on the said document prior to its finalisation by the National Department of Human Settlements (NDHS).

Introduction

In 2014 the Human Settlements MINMEC resolved that the assignment of the metropolitan municipalities would be put "in abeyance," but that accreditation (L1 and L2) would proceed. Furthermore the MINMEC resolved that the 2012 *National Accreditation and Assignment Frameworks* (AAF) must be revised to support a new national seamless, phased approach to accreditation and assignment. The AAF is the key policy document which sets out how accreditation and assignment of municipalities for the housing function takes place.

Since then, SALGA's interventions have been aimed at the following strategic priorities:

- Lobby for the full implementation of L1 and L2 accreditation for municipalities already accredited;
- Support municipalities who are newly applying for accreditation;
- Keep accreditation and assignment on the agenda and maintain pressure on the NDHS and provincial departments to continue the process; and

- Provide input into the *Revised AAF* being developed by the NDHS.

Although accreditation and assignment has not featured on the agenda of MINMEC since October 2014, SALGA has actively lobbied the NDHS on the Revised AAF. In February 2017 SALGA met with the Department and provided written comments on the initial Diagnostic Report which underpinned the draft Revised AAF. In March 2017 SALGA made verbal inputs when the 2nd draft of the Revised AAF was presented to the National Accreditation Task Team, followed by the submission of written comments to the NDHS in May as a preliminary position.

A final draft of the document is **attached** to this Circular and also available on SALGA's website: <http://www.salga.org.za/Documents/Media%20Room/Circulars/Revised%20National%20Accreditation%20and%20Assignment%20Frameworks.pdf>

Given the importance of this policy framework in the context of the decentralisation and developmental agenda for local government, **you are kindly invited to review the attached draft *Revised Accreditation and Assignment Frameworks (AAF)* document and submit comments to SALGA by 8 September 2017**. Comments received will be consolidated and submitted to the NDHS. It is understood that NDHS plans to submit the AAF to its departmental structures and then the MINMEC in the next 2-3 months.

Summary of the main features of the draft Revised Accreditation and Assignment Frameworks

Given that the legislative framework for accreditation and assignment has not changed, the Revised AAF is largely similar to the 2012 version. However there are some key critical concepts and changes that have been introduced:

- **Separation of the assignment framework from the accreditation framework**, thus essentially creating two documents. The reasons for this change is that the legislative framework which underpins the two processes is different: while accreditation is based upon Section 10 of the Housing Act, assignment of the housing function is to be undertaken as per the Constitution (Sections 126 and 156) and the Municipal Systems Act (Section 10).
- **Increased emphasis and centralisation of the Housing Sector Plans (HSP)**. The accreditation process centres on a credible HSP, and accreditation is directly linked to the national housing programmes which the municipality requests to administer as part of its HSP. The municipality would only be accredited for those national housing programmes

that are relevant to it and contained in its HSP. The municipality may utilise different implementing agents to implement these programmes for which it is accredited, including province, private partner, or agency (pgs. 22-23).

- **Changes to the process for district accreditation.** If a district municipality applies for accreditation, the municipality must demonstrate that it is authorised (as evidenced by a council resolution) by all or a majority of the local municipalities within its jurisdiction to act on behalf of those local councils, and that it has the necessary powers and functions and financial responsibilities to ensure integrated and efficient service delivery (pg. 20).
- **Introduction of clear timeframes for decision-making.** At each step of the accreditation and assignment processes, clear timeframes are introduced with consequences and remedial actions to be implemented in the event of non-compliance (pgs. 37-39 and pgs. 140-143).
- **Establishment of an appeal mechanism.** If an MEC declines an accreditation application by a municipality, then the Municipality may appeal to the national Minister responsible for human settlements, in terms of Section 40 of the Inter-Government Framework Relations Act (IGFRA), 2005. The national Minister has 30 working days to respond to the appeal of the Municipality (pg. 38). In the case of assignment, the Municipality may appeal to the national Minister if the MEC declines assignment based on the appointed panel's assessment (pg. 141). Or if the MEC declines assignment later in the process (after the required consultations), the municipality can appeal to the national Minister for human settlements at that point. If the municipality remains aggrieved by the decision of the Minister, the dispute resolution mechanism provided for in Chapter 4 of the IGRFA will apply (pg. 144).
- **New obligation that the MEC appoints the assessment panel.** Within 30 days of receiving a formal accreditation application from a municipality, the MEC must appoint a panel to assess the applicant municipality for accreditation (pg. 37). The provincial department does not serve on the panel, but is allowed to make written submission to the panel and act as an observer in the assessment session. For assignment, the MEC must appoint a Facilitator to guide and manage the assignment process, and a panel to assess the municipality (pg. 141). Later in the process, an independent technical assessment of the assignment for the transfer of staff, assets, and liabilities must be conducted (pg. 142).
- **Introduction of accountability mechanisms for all spheres of government,** including specific remedial actions, and steps to be taken if there is a dispute. Remedial actions are spelled out in the event that either the province or municipality does not meet their obligations in the accreditation process (pg. 60) and the assignment process (pg. 157).

Proposed SALGA Position

On the whole, the Revised AAF is more supportive of local government than the 2012 version. It strengthens the position of local government by introducing clear timeframes, increasing mechanisms for accountability and recourse, and providing greater clarity on the role of each sphere of government.

The following points are noted:

- **Accountability:** SALGA wholly supports the following components of the document:
 - The introduction of an appeal mechanism for assignment and accreditation applications (i.e. National Minister for Human Settlements);
 - Greater focus on capacity of provincial departments to support and monitor accredited municipalities;
 - Strengthened accountability mechanisms for province and municipality;
 - Explicit timelines for each step of the accreditation application and approval process.

- **Monitoring of province by NDHS:** Emphasis on the responsibility of NDHS to monitor the fulfilment by provincial departments of their obligations is welcomed. SALGA especially welcomes the following statement (pg. 41):

The DHS is responsible for assessing and monitoring the capacity of provincial departments to re-orientate in accordance with the accreditation of municipalities and to provide the necessary municipal monitoring and support. Provincial Heads of Department and MECs should report on a regular basis to Technical MINMEC and MINMEC on performance progress in this regard.

- **Provincial membership of the assessment panel:** Provincial department officials **must not** serve on the panel, because they cannot be objective given that their own job descriptions will shift if the municipality is accredited or assigned. It is therefore recommended that the principle be retained (inclusion of provincial department knowledge and input into the assessment deliberations) but that this instead be achieved by requiring that the panel receive both written and verbal inputs from the provincial department. The provincial department can also serve as an observer to the assessment.
- **Changes in roles and responsibilities between province and accredited municipality:** One of the weaknesses of the current AAF is that, although municipalities are accredited on paper, the various directorates in provincial departments do not change their day-to-day policies and procedures to reflect a municipality's accredited status. The Accreditation Unit within the provincial department is fully supportive, but the other operational units in the PDHS do not internalise and adapt their practices so as to fully implement the AAF. It is therefore proposed that the revised AAF must be much more

detailed about exactly which processes, approvals and practices shift from the province to the municipality for L1 and L2. Therefore the table on pgs. 26-29 is welcomed and very important. **Municipalities are strongly encouraged to review pgs. 28-31, and indicate if changes must be made to clarify the authority and responsibilities of the accredited municipality vs. the provincial department.**

Proposed reforms to the funding framework for accredited municipalities

In addition to the general comments on the process and principles for accreditation and assignment as outlined above, SALGA also proposes critical changes to the funding framework for accredited and assigned municipalities.

In 2016, SALGA also conducted research on operational funding and the gazetting of Human Settlements Development Grant (HSDG) allocation to accredited municipalities, in order to assess compliance by provincial departments to this vital aspect of the existing AAF. The research obtained a comprehensive picture of the practices in all nine provinces since municipalities received accreditation. This research forms the basis for the following recommendations and comments on the funding aspects of the AAF:

HSDG funds to accredited or assigned municipalities

- **Determination of HSDG allocation to accredited municipalities:** The amount of HSDG to accredited municipalities should not be formula-based, but instead should be negotiated and agreed upon based on municipal HSP and business plan (project list), and set out in the signed Implementation Protocol. This approach is consistent with the proposed approach to centralise the Housing Sector Plan in the AAF.
- **Non-transfer of HSDG to accredited municipalities:** Our research found that some provinces gazette planned expenditure from HSDG per accredited municipality [as per the Division of Revenue Act (DORA)] but then proceed to spend the funds directly themselves, which undermines the core principles of accreditation. The Revised AAF must stipulate that provincial departments must transfer all or majority (over half) of HSDG funds to accredited municipalities.
- **Disbursement of HSDG funds to accredited municipalities:** Municipalities cannot provide bridge financing. Payments should be made in tranches at the beginning of each quarter. If expenditure report shows underspending of previous tranche, then the next tranche may be reduced.
- **Accountability for non-compliance with legislation:** National Treasury and NDHS must hold provincial departments to account if they do not gazette and transfer HSDG funds to accredited municipalities, as per DORA. The 2018/19 HSDG grant framework in DORA

must stipulate that provincial departments will not receive their second tranche if HSDG funds to accredited municipalities have not been gazetted by end of May.

Operational funding to accredited or assigned municipalities

- **Gazetting of operational funding:** The Revised AAF introduces a new requirement that provincial departments must gazette operational funding to accredited municipalities. We would support this requirement, but also suggest that this obligation must be written into DORA. (NB: The amount of HSDG funds and operational funds to accredited municipalities must be disaggregated in the gazette).
- **Allocation and disbursement of operational funding:** The draft Revised AAF states that operational funding should be determined by formula or a certain percentage of HSDG. However, for smaller municipalities with small HSDG allocations, this percentage does not cover minimum costs of running a human settlements unit. Furthermore, HSDG expenditure may be lumpy, but salaries are a constant expense. It is therefore more appropriate to allocate a set amount of operational funding to municipalities based on business plan requirements. The Revised AAF should offer two operational funding models, and provincial departments and accredited municipalities would then decide on which model is most appropriate to that municipality and agree on this model in the IP:
 - a. Percentage of allocated HSDG per quarter (paid up-front) – e.g. 2% of HSDG for L1 municipalities and 3% for L2; or
 - b. Agreed amount based on budget for HS unit operational costs submitted by municipality, paid up-front in tranches, with expenditure reports.
- **Direct expenditure by municipalities:** The Revised AAF must make it clear that provincial departments must transfer operational funding to accredited municipalities and not spend the money on their behalf by paying service providers directly. Operational funding must be transferred to municipalities in tranches up-front (not on a reimbursement basis). Operational funding to accredited municipalities is *in addition to* capacity-building funds spent by provincial departments directly.
- **Source of operational funding to assigned municipalities:** The Revised AAF must clearly indicate the source of operational funding for assigned municipalities. It is proposed that operational funding for assigned municipalities should come from two sources:
 - OPSCAP from HSDG allocation received by the assigned municipality from NDHS, and;
 - The equitable share must be adjusted to account for the shift of the housing function to the assigned municipality.
- **Designation of HSDG to assigned municipalities:** The draft Revised AAF indicates that the HSDG to assigned municipalities would be administered as a Schedule 4 grant by the NDHS. SALGA supports this proposal. However it is acknowledged that this would create

misalignment, whereby the HSDG to the province is a Schedule 5 grant but the HSDG to the assigned municipality within that province is a Schedule 4 grant. The implications of this disjuncture on IGR and planning alignment need to be thoroughly considered.

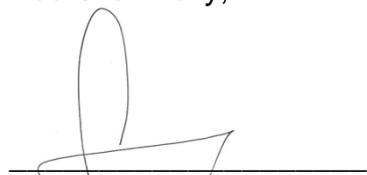
Way forward

In conclusion, your comments are invited on the Revised AAF as well as SALGA's proposed position, as outlined above. Kindly submit inputs to Alison Tshangana (cell: 083 280 2759; email: atshangana@salga.org.za) **by 8 September 2017**.

Comments received from municipalities will be incorporated into the written submission by SALGA to the NDHS. Once the Revised AAF is approved by the MINMEC, newly identified municipalities will be accredited in the new order. While this process unfolds, the 2012 framework applies and provinces are expected to support municipalities and identify new municipalities towards meeting the MTSF target of accrediting 28 new municipalities by 2019.

We look forward to your inputs on this critical policy framework, impacting on powers and functions, and delivery models for the human settlements sector.

Yours faithfully,



XOLILE GEORGE
CHIEF EXECUTIVE OFFICER

ATTACHMENT: Draft Revised Accreditation and Assignment Frameworks for Municipalities to Administer National Human Settlements Programmes - March 2017