



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

SPECIAL ATTENTION OF:

Regional Managers; Office of Public Housing
Directors; Program Center Coordinators;
Public Housing Agencies; Resident
Management Corporations

NOTICE PIH 2012-7 (HA)

Issued: February 2, 2012
This notice remains in effect until
amended, superseded or rescinded

Subject: Demolition/disposition of public housing and associated requirements for PHA Plans, resident consultation, Section 3 and application processing.

- 1) Purpose: To explain application processing requirements in requesting HUD approval to demolish, dispose or both demolish-and-dispose of public housing under Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) (1937 Act). This notice is intended to be used in conjunction with HUD's implementing regulations at 24 CFR part 970, as well as related rules at parts 50 and 58 (Environmental Assessment), 903 (PHA Plan) and 941 (Public Housing Development).
- 2) Background:
 - A. Section 5A: Public Housing Agencies (PHAs) prepare PHA Plans pursuant to Section 5A of the 1937 Act, as amended by other statutes, including the Housing and Economic Recovery Act of 2008 (HERA).
 - B. Section 18: PHAs may submit an application to demolish, dispose or both demolish-and-dispose of public housing to HUD's Special Application Center (SAC application) under Section 18 of the 1937 Act and 24 CFR part 970 for HUD approval. Section 18 of the 1937 Act requires PHAs to include and authorize proposed demolitions or dispositions in their PHA Plan and to certify that the actions contemplated in the PHA Plan comply with Section 18 of the 1937 Act. Furthermore, pursuant to 24 CFR section 970.17, PHAs applying for disposition must certify that retention of the property is not in the best interests of the residents or the PHA. This includes proposed dispositions that are justified for reasons that are in the best interests of the public housing residents and are consistent with the goals of the PHA and its PHA Plan and that it is otherwise consistent with the 1937 Act
- 3) PHA Plan Requirement: For PHAs required to prepare and submit an annual PHA plan to HUD, proposed demolitions or dispositions must be identified in the PHA Plan or in a significant amendment to the PHA Plan. Pursuant to 24 CFR section 903.7(h), PHAs must include a description of any public housing owned by the PHA for which the PHA has

applied or will apply for demolition or disposition approval under Section 18 of the 1937 Act and the timetable for demolition or disposition. HUD will not process or approve a SAC application without evidence that the PHA has complied with this requirement.

MTW Agencies include proposed demolitions or disposition in the Annual MTW Plan or an amendment to that plan, in compliance with applicable MTW Plan requirements (e.g. that at least one public hearing was held, that the Annual MTW Plan was available for public comment for at least thirty (30) days, and that the Agency took no less than fifteen (15) days between the public hearing and the approval of the plan by the Board of Commissioners/ Directors in order to incorporate any public comments into the plan). HUD will not process or approve a SAC application without evidence that the MTW Agency has complied with this requirement.

Qualified PHAs, as defined by HERA, no longer submit annual PHA Plans to HUD but are still required to hold an annual public hearing on their public housing activities, including any and all planned demolitions or dispositions. HUD will not process or approve a SAC application without evidence that the PHA has complied with this requirement.

4) Resident Consultation:

- A. Consultation for PHA Plan: For all proposed demolitions or dispositions, PHAs comply with the resident consultation requirements for the PHA Plan (24 CFR part 903), including sections 903.13, 903.15, 903.17, and 903.21(a), for a public hearing, a comment period and consultation with the applicable resident advisory board (RAB). PHAs ensure reasonable outreach to encourage broad public participation in the hearing on the PHA Plan (or significant amendment) as required by 24 CFR section 903.17(c).
- B. Consultation for SAC application: For proposed SAC applications, PHAs comply with resident consultation requirements under 24 CFR section 970.9, which include consultation with: (i) residents residing in the project proposed for a SAC application; (ii) resident organizations for the project, if any; (iii) PHA-wide resident organizations affected by the SAC application, if any; and (iv) the Resident Advisory Board (RAB) or equivalent body. PHAs should provide a copy of the SAC application to these residents and resident groups, post the SAC application on its website, and/or make the SAC application available for review at its central office.

PHAs should inform these resident and resident groups of the right to submit written comments about the SAC application, and inform them that the PHA will respond to their comments in writing and then submit their comments and its written responses to those comments to HUD as part of the SAC application. PHAs should also consult these resident and resident groups on the relocation plan, if any.

In addition, PHAs ensure that they communicate with residents in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973, and as applicable, the Americans with Disabilities Act. This includes ensuring that notices, policies, and

procedures are made available via accessible communications methods including the use of alternative formats, such as Braille, audio, large type, sign language interpreters, and assistive listening devices, etc. (24 CFR section 8.6). In addition, PHAs ensure public hearing facilities and services are physically accessible to persons with disabilities in accordance with Section 504 and that persons with limited English proficiency (LEP) will have meaningful access to programs and activities. Furthermore, HUD encourages all grant recipients and sub-recipients to adopt the goals and objectives of Section 508 of the Rehabilitation Act of 1973 by ensuring that electronic and information technology is made available to persons with disabilities on a comparable basis as it is made available to persons without disabilities.

- C. Consultation for Dispositions with Development: The intent of consultation is to assure resident participation and awareness of future development plans. For disposition actions where public housing is redeveloped as new public housing as either conventional or under a mixed-finance method pursuant to 24 CFR part 941, subpart F, resident consultation occurs within the context of the PHA Plan amendment and SAC application, as noted above. Specifically, residents and resident groups are presented with information on the number and affordability of the public housing units and other affordable units to be developed, the number of bedrooms per unit, the screening and application requirements for new units, the ownership structure of the units, and any opportunity to return or other occupancy preferences for displaced residents. If such information is not available prior to the SAC application or subject to change after final SAC action, residents are informed of the potential for development plan revisions and provided with a means, such as a newsletter or open meeting, for how such revisions will be presented to residents.
- 5) HUD Civil Rights Review: HUD's Office of Fair Housing and Equal Opportunity (FHEO) conducts a civil rights review of SAC applications (FHEO review). Pursuant to 24 CFR section 970.7(a)(17), HUD may request additional information from PHAs in support of their SAC applications, including compliance with the nondiscrimination requirements of the relocation plan under 24 CFR section 970.21(a), compliance of any housing redevelopment or replacement plans with applicable site and neighborhood standards under 24 CFR section 941.202, and consistency of the SAC application with the PHA's affirmatively furthering fair housing certification under section 903.7(o). HUD will provide additional guidance to PHAs and its staff on how SAC applications must demonstrate that proposed demolition/disposition actions are in compliance with civil rights related requirements.
- 6) Environmental Reviews: Prior to submitting a SAC application, an Environmental Review for the proposed demolition or disposition must be completed pursuant to 24 CFR part 50 or 58, including compliance with environmental justice requirements. HUD will not process or approve a SAC application without the applicable local HUD Field Office of Public Housing indicating that one of the following has occurred: (1) the Environmental Review was completed by HUD under 24 CFR part 50 for the proposed demolition and/or disposition action, and the action is environmentally acceptable; (2) the Environmental Review was completed by a Responsible Entity under 24 CFR part 58 and HUD has approved a Request for Release of Funds; or (3) a Responsible Entity under 24 CFR part 58 has made a

determination that the project or activity is exempt under 24 CFR 58.34(a)(12) because the project or activity is categorically excluded under 24 CFR 58.35(a)(4) or (5) and none of the related environmental laws are triggered.

- 7) Existing Financial Transactions: PHAs with an approved Capital Fund Financing Program (CFFP) transaction, Section 30 PHA Mortgaged Transaction (PMT) or Operating Fund Financing Program (OFFP) certify as part of the SAC application the existing agreement is not at-risk as a result of the proposed demolition or disposition. SAC reviews such certifications with the respective program office.
- 8) Security and Utility Deposits as Relocation Expenses: Pursuant to 24 CFR section 970.21(e)(2), the payment of a displaced resident's security, utility or both security-and-utility deposits at a comparable housing unit may be an "actual and reasonable" relocation expense. To determine whether such a payment is reasonable, the PHA considers the current public housing security deposit's applicability to the new comparable housing unit. For example, if the current public housing security deposit is significantly less than the security deposit required for the new comparable unit, the PHA may decide to provide the resident with funds for the new security deposit. PHAs do not unreasonably hold public housing security deposits so they can use other 1937 Act funds for payments of residents' new security deposits. Loans or grants directly to displaced residents for new deposits are not permitted if the PHA's source is either Capital or Operating Funds. The PHA pays such deposits directly to the utility company or landlord with subsequent returns or refunds back to the PHA. The resident holds no interest in a utility or security deposit paid by the PHA.
- 9) Processing SAC Applications: Prior to submitting an application, PHAs ensure the application is complete with all information and documentation required by 24 CFR part 970 and the HUD-52860 form. The SAC will not process an application found to be incomplete or deficient on a substantial item (e.g. supporting information required under 24 CFR sections 970.7(a)(1) - (17)). If a PHA submits a SAC application that is substantially incomplete or deficient, SAC stops the review, rejects the application in a formal letter to the PHA, and registers the application's status as "inactive" in HUD's Inventory Management System (IMS)/PIH Information Center (PIC) system (IMS/PIC). If SAC determines deficiencies to be minor or insubstantial, application processing may continue with the SAC requesting additional information. Information identified under 24 CFR sections 970.7(a)(1) - (17) is not deemed minor or insubstantial.

A PHA may submit a new application for the same demolition or disposition that HUD has rejected under a new application number in IMS/PIC. HUD reviews the new application pursuant to the requirements of 24 CFR part 970. After it has rejected an application, HUD will not allow a PHA to submit the missing items or correct deficiencies in that rejected application. HUD may disapprove a complete application based on the criteria of 24 CFR section 970.29. Specifically, HUD disapproves applications if: (1) the PHA's certification is inconsistent with the PHA plan and/or any information or data available to or requested by HUD under the requirements of 24 CFR part 970; or (2) the application was not developed in consultation with the residents and resident groups as required in 24 CFR section 970.9.

10) Disposition Justification Criteria: A PHA may propose a disposition of units under 24 CFR section 970.17(c) if it certifies to HUD that the disposition is consistent with the goals of the PHA and the PHA Plan, and is otherwise consistent with the 1937 Act. PHAs include a narrative statement (and other information, if applicable) in their SAC applications to support their certifications. HUD reviews PHAs' certifications and narratives, along with other information that is available to or requested by HUD, on a case-by-case basis to determine if the certifications meet the criteria of Section 18 of the 1937 Act and 24 CFR part 970. However, generally the following apply:

- A. Justifications supported by Insufficient Public Housing Funds: HUD disapproves SAC applications when a PHA's supporting certification is based on insufficient public housing funds (either Capital and/or Operating) as such certifications are inconsistent with the 1937 Act in light of alternative resources. Especially with the passage of the Rental Assistance Demonstration (RAD) program under the Consolidated and Further Continuing Appropriations Act of 2012 (for as long as the program remains authorized), there are options other than disposition. Specifically, the options available to PHAs to operate, maintain, and/or reposition low-income housing units (notwithstanding limited appropriations and deferred capital needs), include but are not limited to: (i) RAD; (ii) Choice Neighborhoods grants; (iii) public housing mixed-finance rehabilitation pursuant to 24 CFR part 941, subpart F; (iv) Capital Fund Financing Program (CFFP); (v) use of excess Operating Fund reserves; and (vi) voluntary conversion under Section 22 of the 1937 Act.
- B. Justifications supported by Obsolescence Criteria: HUD processes SAC applications for the disposition of units under this section when a PHA supports its certification based on evidence that the units are obsolete and meet the criteria for demolition in accordance with 24 CFR section 970.15, as further explained in this notice. Alternatively, if units are obsolete and if a PHA submits a SAC application for both demolition and disposition, which, if approved by HUD, would allow the PHA to demolish the obsolete units using public housing funds and then dispose of the underlying land to allow for the new development of low-income housing units, including units developed pursuant to mixed-finance public housing rules at 24 CFR part 941, subpart F.

11) Section 3 Compliance: For purposes of Section 3 of the Housing and Urban Development Act of 1968 (Section 3), HUD's regulation to provide employment, training, and economic opportunities to the greatest extent feasible to Section 3 residents or business concerns is applicable, to any projects or activities funded by public housing funds, regardless of the amount of funds (24 CFR section 134.3(a)(3)). PHAs must comply with Section 3 if public housing funds are used to demolish public housing in accordance with a HUD approval under 24 CFR part 970. In addition, in the event that Section 3 does not apply to demolition and/or disposition actions, planning and carrying out Section 3 activities related to these proposed actions would satisfy, in part, the commensurate public benefit requirement for below fair market value (FMV) dispositions pursuant to 24 CFR section 970.19.

12) Use Restrictions: When a PHA proposes to dispose of public housing below FMV based on a commensurate public benefit pursuant to 24 CFR section 970.19, HUD generally requires the PHA to execute a use restriction or a similar recorded document in a form acceptable to HUD

that assures the use of the property for the HUD-approved commensurate public benefit for a period generally not less than thirty (30) years. HUD generally requires that such use restriction is recorded in a first priority position against the property and survives the foreclosure of any mortgages or other liens on the property.

- 13) Use of Disposition Proceeds: Subject to HUD approval, a PHA uses disposition proceeds and any interest earned on proceeds (after payment of HUD-approved disposition and relocation costs) for the following: (1) unless waived by HUD, retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; or (2) payment of CFFP debt or later issued modernization debt on the project. If any proceeds remain after any required repayment of these debts, proceeds may be used for the provision of low-income housing or to benefit the residents of the PHA, which uses may include: (a) modernization or operation of existing public housing; (b) development of public housing as defined by 24 CFR part 941; (c) funding of homeownership units in accordance with an approved homeownership plan under sections 9, 24, and 32 of the 1937 Act; (d) construction, rehabilitation, and/or acquisition of dwelling units assisted by funds under Section 8 of the 1937 Act; (e) benefits to the residents of the PHA (e.g. job training, child care programs, service coordination); (f) leveraging other funds to secure commercial enterprises on-site to serve public housing residents; (g) funding shortfalls or other new allocations of vouchers under Section 8; and (h) other housing assisted under the 1937 Act or benefits to the residents of the PHA, as approved by HUD. Proceeds may be leveraged with other funds so long as net proceeds are used on a pro-rata basis to fund only the HUD-approved uses (e.g. low-income housing units). PHAs include a specific description of their proposed use of proceeds in their SAC applications. HUD approval is required of all proposed uses of proceeds to ensure PHAs use proceeds in compliance with Section 18 of the 1937 Act and 24 CFR section 970.19.
- 14) Demolition Review Criteria for Cost Ineffectiveness: If a PHA proposes to demolish public housing or non-dwelling structures under 24 CFR section 970.15, HUD reviews the PHA's certification and supporting documentation in accordance with the following to determine that rehabilitation of the public housing is cost prohibitive. The PHA's application evidences that no reasonable program of modifications is cost-effective to return the project to its useful life. HUD evaluates the PHA's determination of the cost-effectiveness of rehabilitation in comparison to the project's total development cost (TDC) in accordance with the following:
- A. Rehabilitation cost-estimate is supported by a list of specific and detailed work-items indentified on form HUD-52860-B;
 - B. Rehabilitation cost-estimate includes only work-items necessary to address the project's immediate needs (up to three years);
 - C. Rehabilitation cost-estimate includes only work-items necessary to return the project to an average quality (e.g. not costs associated with non-assisted housing).
 - D. Rehabilitation cost-estimate includes only necessary repair costs (e.g. with the exception of air conditioners, no new items such as on-site improvements other than those required by local ordinances, washer/dryer hook-ups, garbage disposals, porches);
 - E. Rehabilitation cost-estimate includes only hard construction costs (HCC) as defined in 24 CFR part 905 (generally anything inside a dwelling and within five feet of the exterior

walls, but not site improvements, parking lots, security cameras, playgrounds, community center);

- F. If a PHA uses HUD-accepted cost-standards such as the R.S. Means cost index and the Marshall & Swift cost index, then work-item cost-estimates may include labor costs (e.g. general conditions, profit and overhead) but then these labor costs are not be included as separate cost items;
- G. If costs of asbestos or lead-based paint abatement are in the rehabilitation cost-estimate, then PHAs submit verifying inspection reports. If costs of repairing structural defects are in the rehabilitation cost-estimate, then PHAs submit a report by a licensed professional engineer;
- H. If costs of rehabilitating unit(s) to be accessible to families with disabilities are in the rehabilitation cost-estimate, then PHAs compare such unit counts with the requirement for 5% of total housing stock under Section 504 of the Rehabilitation Act of 1973; and
- I. The following fees are acceptable safe harbors for public housing rehabilitation: Construction contingency at 5% - 10%; Architect fees at 4% - 7% and PHA administration fees up to 2%.

15) Demolition Review Criteria for Obsolescence: If a PHA proposes to demolish public housing or non-dwelling structures under 24 CFR section 970.15, the SAC application provides a detailed description of the project's physical obsolescence, including a description of work items identified in the PHA's rehabilitation cost-estimate, as well as any other details of the project's obsolescence (e.g. other factors that have seriously affected the marketability, usefulness or management of the project). A PHA may submit its most recent Physical Needs Assessment (PNA) as part of its SAC application in order to further support its certification of obsolescence. HUD may conduct or contract a site inspection of a proposed demolition at its discretion and/or to review allegations of PHA certification inconsistencies. A high vacancy rate alone does not justify obsolescence as PHAs lease vacant units in accordance with the Annual Contributions Contract (ACC) with HUD. If the PHA proposes demolition of only a portion of a project, then the description of the partial demolition ensures the viability of the remaining portion of the project.

16) No Demolition or Disposition Prior to HUD's Approval: PHAs may not begin any demolition or disposition, including the resident relocation process, prior to receiving written HUD approval of the SAC application. Pursuant to the ACC, PHAs continue to occupy public housing units until a SAC application is submitted and may continue to lease-up units during HUD's review or after HUD's approval of an SAC application depending on community needs and the unit conditions.

Pursuant to 24 CFR section 970.25(b), PHAs may consolidate occupancy within or among buildings of a project or among projects, or with other housing for the purposes of improving living conditions of, or providing more efficient services to residents, without submitting a SAC application or during HUD's review of an application. If a PHA moves or relocates residents under this occupancy consolidation exception, then such actions are in accordance with public housing occupancy rules (which may include involuntary moves) or other applicable federal requirements and not in accordance with the relocation requirements of 24 CFR part 970. Relocation assistance, including replacement housing, must be provided on a

nondiscriminatory basis, without regard to race, color, religion, creed, national origin, handicap, age, familial status, or gender, in compliance with Federal and state laws. For persons with disabilities displaced from a unit subject to reasonable accommodations, comparable housing must include comparable accommodations. HUD's relocation Handbook 1378 includes guidance on planning for meeting the relocation needs of persons with disabilities.

Pursuant to 24 CFR section 970.21(e), if a PHA determines there is an imminent threat to the health and safety of the residents in a project that has been approved by HUD for demolition and/or disposition, then the 90-day notice of relocation is not required, but instead relocation can begin immediately after HUD approval of the SAC application.

- 17) Technical Assistance: PHAs may consult with SAC on a proposed SAC application prior to an application submission in IMS/PIC. To request technical assistance, call 312-353-6236 or send an email to SACTA@hud.gov.
- 18) Submitting Comments and Other Information: Residents and members of the public may submit comments about a proposed SAC application directly to HUD's Special Applications Center (SAC) at 77 W. Jackson Blvd. Chicago, IL 60604 or via email at SACTA@hud.gov. HUD reviews and considers all comments and other information prior to a determination to approve or disapprove an application. Pursuant to 24 CFR section 970.29, HUD disapproves a SAC application if a PHA certification is found inconsistent with any information and data available to HUD.
- 19) Effective Date: All sections of this notice apply to demolition and/or disposition actions, new SAC application submitted to HUD, and SAC applications currently under review by HUD, except for Sections 9, 14, and 15 which apply to SAC applications submitted to HUD on or after October 17, 2011 and Section 10 which applies to SAC applications submitted to HUD on or after the date of this notice.
- 20) Paperwork Reduction Act: The information collection requirements contained in this notice are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB control numbers are 2577-0029 and 2577-0075.

/s/

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