



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-8000

OFFICE OF PUBLIC AND INDIAN HOUSING

Special Attention of:
Public Housing Agencies (PHAs)
Public Housing Directors
Resident Management Corporations

Notice PIH 2024-40 (HA)
Issued: December 26, 2024
This notice supersedes and replaces Notice
PIH 2021-07

Cross-References: Notices: PIH 2016-22; 2019-13; 2020-23; 2021-37; 2023-07; RAD Final
Implementation Notice Revision 4 (H-2019-09; PIH-2019-23 (HA)

Subject: Demolition and/or disposition of public housing property, eligibility for tenant-protection vouchers, and associated requirements.

I. Purpose.

This notice explains application requirements to request the U.S. Department of Housing and Urban Development's (HUD's) approval to demolish and/or dispose of public housing property under Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) (1937 Act) and related Tenant Protection Voucher (TPV) eligibility for such actions (refer to PIH Notice 2023-07, Revision 1 or the latest Housing Choice Voucher (HCV) Funding Notice). This notice is used in conjunction with HUD's implementing regulations at [24 CFR Part 970](#) and other requirements to the Special Applications Center (SAC) applications. This document is intended to provide clarity to the public regarding existing requirements under the law.

For purposes of this notice, public housing includes all dwelling property, including units in mixed finance transactions and non-dwelling property (e.g., vacant land, administrative buildings and community buildings) acquired, developed, modernized, operated, or maintained with 1937 Act funds (other than Section 8 assistance provided under the 1937 Act).

II. SAC Application Requirements.

- A. **Processing.** HUD's SAC reviews demolition and disposition applications (SAC applications) in accordance with the requirements of [24 CFR Part 970](#). SAC only reviews complete SAC applications. Pursuant to 24 CFR 970.29, HUD will disapprove a SAC application if HUD determines: (1) a certification made by the PHA under [24 CFR Part 970](#) is clearly inconsistent with the PHA Plan or any information and data available to or requested by HUD; or (2) the application was not developed in consultation with residents, resident groups, and local government officials.
- B. **PHA Plan.** The PHA must certify that the proposed demolition or disposition of a public housing property is included in a PHA Annual Plan, Significant Amendment, or MTW Annual Plan. All PHAs must discuss the demolition or disposition at a public hearing, as required by 24 CFR 903.7(h)(2). The PHA must comply with the resident

consultation requirements for the PHA Plan, including discussing with its Resident Advisory Board (RAB) the proposed repositioning or redevelopment option, including demolition/disposition).

C. **Environmental Requirements.** Proposed demolitions and disposition must comply with an environmental review and environmental clearance in accordance with 24 CFR 970.13. A final approval is given by the HUD Approving Official whether the environmental review is conducted by HUD under 24 CFR Part 50 or by a Responsible Entity under 24 CFR Part 58 to determine whether the project will have a significant impact on the environment. See PIH Notice 2016-22. The PHA is responsible for providing the Responsible Entity or local HUD Office of Public Housing (Field Office) with a full description of the activities, per 24 CFR 50.21 Aggregation and 24 CFR 58.32 Project aggregation, in connection with the demolition and/or disposition and if the future uses of the site are known at time of SAC application submission (e.g., onsite RAD redevelopment, conversion to greenspace to increase community's flood resilience, sale to a residential entity, Section 8 Project-Based Voucher (PBV) activity) to comply with aggregation requirements. The site re-use is not limited to future actions by the PHA but includes any future known re-use. See 24 CFR 970.13(b) for factors in determining what constitutes a known future use. See also 24 CFR 58.32 and 24 CFR 50.21.

D. **Resident Consultation.** In addition to resident consultation for PHA Plans, the PHA must comply with resident consultation requirements under 24 CFR 970.9, including consultation with:

- Residents who may be affected by the demolition or disposition action;
- Resident organizations for the affected project, if any;
- PHA-wide resident organizations, if any; and,
- The RAB or equivalent body.

Affected residents include public housing residents living in other units not proposed for removal at the same project as the property proposed for removal (units or vacant land) and/or residents living in any of the PHA's other public housing units.

The PHA must ensure communications and materials are accessible to individuals with disabilities and take reasonable steps to provide meaningful access to persons with Limited English Proficiency (LEP). See *Other Requirements*, Section VI(G)(5) of this notice, for more information on these requirements.

Along with a narrative of its consultation process, the PHA must attach evidence of consultation (i.e., sign-in sheets, dates, and agenda for meetings). The PHA must allow residents and their representatives to submit written comments regarding the PHA's proposed Section 18 Plan and must consider these comments when determining whether and how to proceed with a proposed demolition or disposition, including vacant land. If the PHA proposes a demolition only application, the PHA must conduct a new consultation with residents if it later submits a disposition only application for the same vacant land post building demolition.

As a best practice regarding resident consultation, the SAC encourages the PHA to follow the RAD resident consultation requirements. All meetings should be made accessible to people with disabilities and provide language assistance for all residents. The PHA should conduct two meetings with residents before submitting the application, conduct two meetings with residents after HUD accepts the public housing repositioning action, and one meeting before the final removal action occurs.

- E. **Offer of Sale to Resident Organizations (Disposition Only).** The PHA must, in appropriate circumstances as determined by the Assistant Secretary, provide resident entities with the opportunity to purchase the project, subject to certain exceptions under 24 CFR 970.9(b)(3). A PHA requesting consideration of exceptions to 24 CFR 970.9(b)(1) must follow the process stated at 24 CFR 970.9(b)(4). A resident entity with an interest in purchasing the property must make the request in writing to the PHA, no later than 30 days after having received the notification of sale from the PHA. For its purchase offer to be considered, the resident entity must demonstrate that it has obtained firm commitment for the necessary financing within 60 days of serving its written notice of interest under 24 CFR 970.9(b)(1).
- F. **Board Resolution.** The PHA must obtain a signed and dated resolution from its Board of Commissioners authorizing the PHA to submit the SAC application. The Board must be consulted and approve all material parts of the SAC application including the justification method of disposition (if applicable); use of proceeds; results of resident and local government consultation, and relocation plan. The authorizing board resolution must be dated after all initial local government and resident consultations are conducted.
- G. **Phased Applications.** The PHA may submit SAC applications through a “phased” method with staggered relocation timelines, to facilitate phased redevelopment of a public housing project, so that buildings in later phases remain eligible for public housing funding during earlier phases of the proposed activities. A PHA submits a SAC application in HUD’s Inventory Management System/PIH Information Center (IMS/PIC) for each phase, with different relocation start dates. The same supporting documentation (e.g., board resolution, resident consultation, government consultation, environmental review) may be submitted in support of multiple phases. See 24 CFR 970.7(a).
- H. **Commensurate Public Benefit and Use Restrictions.** Unless an exception is met, the PHA must receive fair market value (FMV) when they dispose of public housing property to a non-affiliated entity. In accordance with 24 CFR 970.19, dispositions proposed below FMV require a finding of commensurate public benefit, which HUD determines on a case-by-case basis. Generally, the disposed property is used or redeveloped as low-income housing (i.e., public housing, project-based Section 8 housing, including through Rebuild/Restore (formerly Faircloth to RAD)), or, if low-income housing is not feasible, for other affordable housing purposes serving low-income families (income at or below 80% of area median). Affordable housing may include, but is not limited to, public housing, project-based Section 8 housing, and housing developed with low-income housing tax credits (LIHTC). HUD encourages the PHA to give public housing residents priority for occupancy of the affordable housing

units. Additionally, the PHA is encouraged to maximize economic opportunities available to residents (as described in Section VI.F.4 of this notice) when requesting HUD approval of a below FMV disposition based on commensurate public benefit. The PHA should specifically describe these economic opportunity benefits in its SAC applications as part of the commensurate public benefit description. Public buildings and infrastructure include streets, bridges, schools, police and fire stations and other public improvements and do not qualify as a commensurate public benefit.

To ensure compliance with a HUD-approved commensurate public benefit, the SAC approval will require that a use restriction that survives foreclosure of mortgages and other liens be recorded in public land records. As part of the SAC application, a PHA may propose a preferred form of use restriction (e.g., LIHTC extended use agreement, HOME agreement, provision in ground lease, separate use agreement) and proposed minimum term, but the final form and term of use restriction is determined by HUD based on the approved commensurate public benefit. HUD, the PHA, and the proposed acquiring entity shall all be parties to the use restriction (see exception for LIHTC Transactions in endnotes). Each use restriction must meet the following criteria:

1. Recorded in a first priority position;¹
2. Binding upon successors and assigns (including HUD-approved transferees);
3. Prior written HUD approval required to:
 - voluntarily convey, assign, transfer, lease, sublease, or otherwise dispose of the property, or any interest in the property (except HUD approval is not required for the conveyance or dedication of land for use as streets, easements for public utilities; and residential leases);
 - mortgage, pledge, or otherwise encumber the property (certain involuntary transfers, i.e., foreclosure is permitted but must be subject to the use restriction);
 - demolish an existing structure or construct a new structure; and,
 - amend or release the Use Agreement.

HUD will not release the Declaration of Trust/Declaration of Restricted Covenants (DOT/DORC) (HUD – 52190 approved 7/23/2023) until it approves the final form of use restriction. HUD encourages the PHA to annually report to its board of directors to confirm compliance with use restriction.

- I. **Ground Lease Dispositions.** PHAs often use ground leases to facilitate the development of affordable housing on former public housing property. A PHA may prefer to dispose through a Ground Lease instead of fee simple sale because it allows the PHA to retain a long-term ownership interest in the property after the lease ends, keeps any real estate tax benefits a PHA has access to, and control how the property is used

¹ If the disposition will occur in conjunction with a Low-Income Housing Tax Credit (LIHTC) financial closing, the Field Office may accept a LIHTC Land Use Restriction Agreement or (LURA) as the Use Agreement document, if the Field Office determines the LIHTC LURA ensures the commensurate public benefit approved by the SAC.

during the lease term. The PHA must obtain HUD approval to lease public housing for non-public housing purposes if the lease term is over 1-year and does not qualify for an exception under 24 CFR 970.3(b). The PHA must describe the terms of the Ground Lease in their Section 18 applications, including terms, payments (up-front or annual), and name of proposed lessee. A Ground Lease is a negotiated disposition (vs. public bid sale) and HUD will only approve it if HUD finds it is in the best interests of the PHA and federal government.

If public housing property is disposed via a Ground Lease and the Ground Lease terminates prior to the required commensurate public benefit term set out in the SAC approval, HUD retains a real property interest under 2 CFR Part 200.311.² The PHA is responsible for tracking the 1937 Act Funds (Capital Funds and Operating Funds) invested at the property prior to the Ground Lease being placed on the property, as well as any new 1937 Act Funds invested once the Ground Lease is in place. If the PHA does not have records evidencing the last 1937 Act Funds expended at a property, HUD will assume that the PHA used all Capital Funds at the property the year before the disposition. The PHA is responsible for notifying HUD of any pending or actual ground lease terminations. HUD will consider if and how the termination impacts any Use Agreement. HUD may require the PHA to record a DOT/DORC on the property and/or require the PHA to obtain additional approvals from HUD to retain the property without the DOT/DORC or to sell the property.

- J. **Disposition Proceeds.** See PIH Notice 2020-23 for guidance on the use and treatment of Section 18 disposition proceeds.
- K. **Changes After SAC Application Approval.** Generally, the PHA must comply with all terms of the SAC approval. Technical corrections to SAC approval letters (such as non-substantial changes to acreage or unit corrections) may be requested by emailing SACTA@hud.gov. No material changes may be made to the SAC approval letter. Any material changes require a new SAC application submission.

Material changes include:

- Method of disposition modifications;
- Public bid sale for less than 80% of the appraised FMV (the PHA must describe its due diligence in offering the public housing property for sale on the open and competitive market and its rationale for accepting an offer that is below 80% of appraised FMV; alternatively, the PHA may submit an updated appraisal); and,

² Based on 42 USC 1437 g(d)(3), 24 CFR 905.304(a)(1),(2) and (3) and (c), Funds used for development have a 40-year term to which they must be operated as public housing. Capital Funds have a 20-year term when used for modernization (extends each time any Capital Funds are used at a property) and a 40-year term when used for development. Operating Funds have a 10-year term, which begins at the conclusion of the fiscal year the Operating Funds were last expended. Note that even small of amounts of Operating Funds (i.e., to mow the lawn) trigger this 10-year term.

- Revised terms of commensurate public benefit for below FMV disposition (the PHA must describe the revised future use of the property so HUD can confirm the commensurate public benefit).

The PHA may request a new SAC application for material changes by sending an email to SACTA@hud.gov with evidence that the PHA has consulted the residents, the RAB, and resident groups about the change, and a board resolution approving the change.

Once a request for material changes is made, the prior approval letter will be rescinded.

III. **Disposition Justification (24 CFR 970.17).**

HUD will approve a disposition when a PHA can certify it is in the best interest of the residents or the PHA to dispose of the public housing project or other real property by sale or other transfer relative to one of the following reasons:

A. **Justification Criteria for Dwelling Units (24 CFR 970.17(a)(b) or (c)).** HUD reviews PHA certifications and narratives, along with other information available to or requested by HUD to ensure consistency of the PHA’s SAC application submission. HUD approves SAC applications for dwelling unit dispositions based on one of the following three reasons:

1. **Surrounding Area (24 CFR 970.17(a)):** The conditions in the area surrounding the project (e.g., density, industrial or commercial development) adversely affect the health or safety of the residents or the feasible operation of the project by the PHA. The PHA must support its application with at least one of the following:
 - a. **Health or safety.** The PHA demonstrates conditions that present serious obstacles in maintaining the units as healthy or safe housing and why the PHA cannot cure or mitigate those conditions in a cost-effective manner. HUD encourages the PHA to submit supporting third-party documentation, which includes environmental reviews conducted by a Responsible Entity under 24 CFR Part 58 or by HUD under 24 CFR Part 50. HUD may consider other available information, including analyses of land development, socioeconomics, community facilities and services, and natural features; or
 - b. **Infeasible operation.** The PHA demonstrates a lack of demand for the units via supporting documentation which includes evidence that the units have long-term vacancy issues, notwithstanding due diligence in marketing (e.g., census tract data on declining population in the jurisdiction; units located in an isolated area with limited access to transportation and infrastructure; high turnover rates). On a case-by-case basis, HUD may require a PHA to submit a market analysis or HUD may perform one.
2. **Improved Efficiency/Effectiveness Through Off-Site Development of Low-income Housing (24 CFR 970.17(b)).** The disposition allows the acquisition, development or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing projects (these post SAC application actions will require their own environmental reviews). “Low-income housing” is defined by Section 3 of the 1937 Act and includes public housing units, PBV units,

or Section 8 Project-Based Rental Assistance (PBRA) units and does not include housing where tenants are using tenant-based Section 8 HCV. The PHA must demonstrate to the satisfaction of HUD that sufficient replacement low-income housing units are being provided in connection with the disposition of the property. In providing the statement justifying the proposed disposition, the PHA explains its plans to acquire, develop, or rehabilitate low-income housing projects. For public housing units, the PHA must submit the development proposal to HUD under 24 CFR Part 905. HUD encourages the PHA to consider RAD or a RAD/Section 18 blend as an alternative prior to submitting SAC application under the efficient and effective justification.

3. **PHA certifies that it has determined the disposition to be appropriate (24 CFR 970.17(c)).** The PHA must certify that it has determined the disposition is appropriate for reasons that are in the best interests of the residents and the PHA; consistent with the PHA goals and plans; and otherwise, consistent with the 1937 Act. In making such a certification, a PHA must consider the needs of its jurisdiction for public housing units, the goals and obligations of the PHA to operate, maintain, and provide decent and safe housing in accordance with its ACC and other tools available to the PHA to preserve and reposition its public housing stock. HUD encourages the PHA to review all other public housing preservation options prior to the submission of this public housing property removal application. The SAC considers project-specific circumstances, needs and resources and in accordance with 24 CFR 970.29 any other information or data requested by HUD, while reviewing each individual SAC application. Below are examples of circumstances where a disposition may be appropriate:
 - a. **Unit obsolescence.** The units are obsolete as to physical condition in accordance with applicable demolition criteria described at Section IV.A.1 of this notice.
 - b. **Very Small PHAs.** The PHA owns and operates 50 or fewer public housing units under its ACC and can demonstrate that it is in the best interests of the residents and PHA to close out its Section 9 public housing program in accordance with Notice PIH 2019-13, or any successor or replacement notice.
 - c. **Improved Efficiency/Effectiveness Through On-Site Development of Low-income Housing (24 CFR 970.17(c)).** A PHA demonstrates that it can redevelop property to better meet the affordable housing needs of the community. The requirements of Section II.A.2 of this notice apply except that the replacement low-income housing units are located on-site. The replacement of low-income housing units may be newly constructed or the same public housing units after rehabilitation. If the PHA is proposing to dispose of public housing units to allow the same units to be modernized (rehabilitated) under mixed-finance public housing project rules of 24 CFR Part 905, the PHA submits the SAC application under the “MF-MOD” disposition application type in IMS/PIC, or as directed in any successor system. This ensures the PHA will continue to receive Capital Fund and Operating Fund subsidy for the units throughout the modernization period.

- d. **Scattered Site Units.** A PHA demonstrates that the distance between units and lack of uniformity of systems (e.g. HVAC, utilities) makes it challenging to continue to operate and/or maintain the units as public housing. For purposes of this notice, scattered site units mean units in contiguous or non-contiguous buildings with four or fewer total units on one side of a city block.

B. Blending Section 18 Disposition Approvals with RAD Conversion (24 CFR 970.17(c)).

Provided that a project meets the criteria outlined below, a PHA that is converting a portion of the public housing units within a Converting Project and is replacing the units proposed for disposition with project-based Section 8 assistance within the Covered Project may be subject to the provisions governing RAD/Section 18 Blends, as the terms “Converting Project” and “Covered Project,” and “RAD/Section 18 Blends” are defined in the Rental Assistance Demonstration (RAD) Final Implementation Notice Revision 4 (H-2019-09 PIH-2019-23 (HA)), as amended from time to time (the “RAD Notice”). The aggregate number of replacement units under project-based Section 8 must meet the RAD “substantial conversion of assistance” requirements as established in the RAD Notice. All residents shall be treated uniformly and in accordance with RAD requirements, including the civil rights requirements and reviews described in the RAD Fair Housing, Civil Rights, and Relocation Notice (PIH 2016-17 (HA)). RAD/Section 18 blends are primarily processed by the Office of Recapitalization and are subject to RAD Notice requirements and processes related to Financing Plan submission requirements, underwriting, DOT releases, terms of the disposition (e.g., treatment of proceeds), and placement of a long-term use agreement at the Covered Project. In addition to RAD requirements, the PHA must also satisfy all Section 18 submission requirements.

- 1. **RAD/Section 18 Construction Blend.** The percentage of units eligible for disposition under Section 18 within the Converting Project is based on the following: 1) whether that project will be demolished and redeveloped; 2) whether the assistance will be transferred to a new site under RAD; or 3) the hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, proposed for a rehabilitation of the Covered Project as compared to the Housing Construction Costs (HCC) as published by HUD for the given market area. The following table sets forth the eligibility criteria for a RAD/Section 18 Construction Blend and, for each criteria, the maximum percentage of units eligible for Section 18 and the minimum number of units that will convert under RAD within the Converting Project:

Eligibility	Unit Mix Percentage (Section 18/RAD)
<ul style="list-style-type: none"> • Proposed rehab where hard construction costs exceed 90% of the HCC for the given market area <u>OR</u> • Demolition and Redevelopment of the project <u>OR</u> • Transfer of Assistance 	up to 90% Section 18 at least 10% RAD

<ul style="list-style-type: none"> Proposed rehab where hard construction costs exceed 60% of the HCC for the given market area 	up to 60% Section 18 at least 40% RAD
<ul style="list-style-type: none"> Proposed rehab where hard construction costs exceed 30% of the HCC for the given market area 	up to 30% Section 18 at least 70% RAD

A PHA intending to use a RAD/Section 18 Construction Blend must first submit an Application for the project in accordance with Section 1.9 of the RAD Notice.

- 2. RAD/Section 18 Small PHA Blend.** For any PHA with 250 or fewer public housing units under its ACC, **at the PHA’s discretion**, up to ninety percent (90%) of the units in a Converting Project may be disposed of under Section 18 **and at least ten percent (10%) of the units must be converted under RAD.** The PHA is not required to remove all its remaining public housing units through a Small PHA Blend transaction. However, to be eligible for the Small PHA blend, in addition to the PHA Plan requirements the PHA must submit to the HUD Field Office a feasible repositioning plan approved by the PHA’s Board of Commissioners and acceptable to HUD that shows how the PHA will remove the remainder of its public housing assets and will result in the closeout of the PHA’s Section 9 ACC consistent with PIH Notice 2019-13 or successor notice (see further guidance that HUD will post) .

Any PBV contract created under this subparagraph must be administered by a Section 8 contract administrator with at least 250 HCV units under its HCV Consolidated ACC prior to the creation of the PBV Housing Assistance Payments (HAP) contract unless the Field Office determines that the proposed contract administrator has sufficient capacity to administer the PBV contract. The Field Office will consider factors such as the proposed contract administrator’s prior SEMAP scores, recent HCV-related audit findings for the contract administrator, and whether the proposed contract administrator will have sufficient budget authority and units under its Consolidated ACC (in addition to any existing RAD or Non-RAD PBV HAP Contracts) to adequately serve the tenant-based waiting list and provide mobility options for the PBV residents.

A PHA intending to use a RAD/Section 18 Small PHA Blend must first submit an Application for the project in accordance with Section 1.9 of the RAD Notice.

- 3. Sequenced Blends.** A PHA that has first received approval for a property under a Section 18 disposition application under another justification under Section III.A of this notice (except for under Section III.A.2 and Section III.A.3.c) shall be subject to the provisions governing RAD/Section 18 Blends provided they request and receive SAC approval to conditionally rescind the Section 18 approval for some portion of RAD eligible units and convert the public housing assistance of at least 10% of units under RAD.

- C. Justification Criteria of Non-Dwelling Buildings and Vacant Land (24 CFR 970.17(d)).** The PHA certifies, by narrative statement and supporting documentation, that disposition of non-dwelling buildings or vacant land meets one of the criteria: under

24 CFR 970.17(d)(1) the property exceeds the needs of the project after the date of full availability (DOFA); or 24 CFR 970.17(d)(2) the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the development.

IV. Demolition Justification.

In accordance with the Annual Contributions Contract (ACC) and other applicable public housing requirements, public housing property cannot be demolished without HUD approval. The PHA must secure HUD approval to demolish public housing property under another authority (i.e., Section 24 Choice Neighborhoods, RAD), or under Section 18 of the 1937 Act). In carrying out approved demolitions under Section 18 of the 1937 Act, the PHA complies with all applicable public housing requirements (i.e., procurement, Davis-Bacon wages, fair housing requirements). If the PHA uses Capital Funds to pay for the demolition, it complies with all applicable 5-year Annual Plan and other Capital Fund Program requirements.

If a PHA's proposed demolition occurs after the proposed disposition of public housing units or other property (e.g., by a LIHTC acquiring entity), then HUD approval is not required for the demolition. Instead, the PHA must comply with the disposition criteria under 24 CFR 970.17 and Section III of this notice.

A. Justification Criteria (24 CFR 970.15). HUD reviews demolition requests in accordance with the following criteria: (1) the project or portion of a project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; and (2) in the case of an application for demolition of a portion of a project, the demolition will help to ensure the viability of the remaining portion of the project.

1. Physical Condition (24 CFR 970.15(b)(1)(i) and (b)(2)). The PHA must demonstrate substantial physical issues of the buildings/units (e.g., critical structural issues, deficiencies in major systems, deterioration due to prolonged deferred maintenance) that cannot be corrected in a cost-effective manner. The PHA may submit Physical Needs Assessments (PNAs), government inspections (including condemnation orders), and/or independent architect or engineer's reports as supporting documentation. HUD may consider other available information, including REAC scores; Capital Fund Program Five Year Action Plans, Energy Performance Contracting (EPC) information; and/or on-site inspections by HUD staff.

If a project's rehabilitation costs are between 57.14% (or 62.5% if elevator building) and 90% of total development cost (TDC), the PHA may either voluntarily pursue a demolition or disposition action for the project or may rehabilitate the project with Capital Funds. However, if rehabilitation costs for a project exceed 90% of TDC, the PHA's only choice is to pursue a demolition or disposition or use funds other than Capital Funds to address the project's capital needs.

- a. **PHA's must submit the following to certify physical obsolescence:**
- **HUD-52860-A (8/31/2023) Form;**
 - **HUD-52860-B (8/31/2023) Form;**
 - **Scope of Work Report.** This includes a list of specific and detailed work items that require rehabilitation or repair, preferably prepared by an outside engineer or architect; and,
 - **Excel document of Scope of Work Rehab Cost-Estimates** (including *Allowable Soft Costs*, see below).
- b. **Scope of Work.** The scope of work should include the following:
- Estimates based on the standards outlined in the most recent International Building Code (IBC) and National Fire Protection Association (NFPA) 5000 standards. The PHA may include local code requirements (e.g., fire codes; requirements for natural disasters such as flooding or wildfires);
 - Building systems (e.g., HVAC, plumbing, electric), external amenities (e.g., roofs, doors, windows), and internal amenities (e.g., kitchens, bathrooms, flooring) limited to those that address immediate capital needs for a maximum of three years. Replacement costs are restricted to items evidenced to be in poor condition that require immediate replacement or with a remaining useful life of three years or less. Actual service life may depend on initial quality of the item, local environmental factors, use/abuse, and levels of routine maintenance. The age of an item alone is not evidence of need to repair or replace. Each item is individually estimated and may reference life cycle values per the R.S. Means Facilities Maintenance and Repair Cost Data book;
 - Underground utilities (e.g., sewer, water, gas, electric), regardless of distances, provided the PHA owns the utility and evidences the need for replacement;
 - Mitigation costs of asbestos, lead-based paint, or other environmental issues supported by reports submitted with the SAC application;
 - Structural defects when supported by reports from a licensed professional engineer;
 - Accessibility improvements for persons with mobility, vision, hearing or other disabilities, provided improvements are consistent with standards, regulations, and other requirements under Section 504 of the Rehabilitation Act of 1973 (including the Uniform Federal Accessibility Standards (UFAS)), Fair Housing Act, Americans with Disabilities Act, other applicable federal authorities, state or local requirements that exceed federal baseline requirements, and accessibility requirements in remedial agreements or orders;
 - Imminent health and/or safety issues even if such costs are otherwise not eligible provided the PHA provides supporting documentation from an independent party evidencing the occurrence and resulting health and/or safety risks. Due to extreme weather events the cost of installing air

conditioning or heating systems (where previously non-existent) may be included.

- c. **Items Generally Not Allowed in the Scope of Work.** HUD reserves the right to disallow items in a scope of work if HUD determines there are more cost-effective alternatives to address the rehabilitation or replacement needs. If the PHA completes major capital work after the scope of work is prepared, the PHA must include a description of that work in the SAC application. HUD generally does not allow the following costs to be included in a rehabilitation scope of work:

- Work associated with enhancements or improvements of working systems or fixtures at the project (including energy efficiency “green” improvements);
- Amenities not currently existing at the project (e.g., solar panels; tankless water heaters; trash enclosures, washer/dryer hook-ups; garbage disposals; central air conditioning; addition of new porches);
- Work items that address a project’s needs beyond three years;
- Local code compliance if the building code requirements are otherwise not triggered by the rehabilitation/repair;
- Landscaping or other site work beyond five feet of the exterior walls of a building;
- Upgrading utility lines that are otherwise in working condition;
- Work items associated with site improvements and appurtenances (e.g., parking lots, security cameras, playgrounds, community centers), even if those site improvements or appurtenances exist and are in need of repairs; and
- Replacing PHA personal property (e.g., replacing appliances or other removable fixtures such as refrigerators, ovens, and window treatments).

Generally, any work item listed in “Fair” or “Good Condition”.

- d. **Cost Estimates.** The following generally applies to cost estimates of the eligible scope of work items:

- Total development costs (TDC) comparisons per HUD-posted costs for the year the rehabilitation estimate is made. See 24 CFR 905.314.
- R.S. Means cost index, Marshall and Swift cost index, or other accurate and reliable cost estimates (e.g., actual and competitive bids).
- Housing construction costs (HCC) as defined in 24 CFR Part 905 (including existing items inside a building or within five feet of the exterior walls; and costs to repair landscaping damaged due to rehabilitation).
- PNA report should provide a summary description of the methodology used to prepare the PNA including the number of units inspected and the ratio of vacant to occupied units inspected. An occupied building should have a reasonable number of occupied and vacant units inspected that represent a similar ratio of the occupied vs. vacant units when preparing a PNA.

The PHA may not include additional costs attributable to inflation or “cost escalation.” For example, if a PNA completed in 2022 indicates a roof replacement is necessary in 2024, the PHA must use current estimated costs without any escalation, cost adjustments or other means of adjusting for inflation for work projected to be undertaken/completed in 2024. Instead, the PHA uses 2022 cost index information.

- e. **Allowable Soft Costs.** The following fees are maximum amounts for soft costs associated with public housing rehabilitation. HUD may consider higher percentages for soft costs for compelling reasons on a case-by-case basis. The PHA may flexibly determine costs for each item provided the total cost does not exceed the maximum. Percentages are based on hard construction and will vary based on the project size:
 - Construction contingency: 7.5%
 - Architectural/engineer’s design and construction monitoring fees: 5.5%
 - Profit and overhead fees for specialty subcontractor (e.g., HVAC, electric, plumbing, elevator): 10%
 - General condition fees (e.g., permit, insurance, bonds): 5%
 - PHA administrative costs: 2%
 2. **Location (24 CFR 970.15(b)(1)(ii) and (b)(2)).** PHA demonstrates the location of the units causes obsolescence, including physical deterioration of the neighborhood; change in neighborhood from residential to industrial or commercial; or environmental conditions which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use. The cost test for obsolescence based on location includes the PHA’s cost to cure the obsolescence (e.g., buffering nearby industrial or commercial development; mitigating environmental conditions) and whether these costs exceed applicable TDC percentages. In some cases, there may be no way to cure obsolescence, regardless of cost (e.g., project is in a Federal Emergency Management Agency (FEMA) designated floodway). In other cases, obsolescence may be curable with a mitigation cost (e.g., flood-proofing and flood insurance for designated floodplains).
 3. **Other Factors (24 CFR 970.15(b)(1)(iii) and (b)(2)).** PHA demonstrates factors impacting the marketability, usefulness, or management of the units that seriously impede operations for residential use supported by third party documentation. The cost test for obsolescence based on other factors includes the PHA’s cost to cure the cause and whether these costs exceed applicable TDC percentages. In some cases, curing obsolescence is not possible regardless of costs. In cases where obsolescence may be curable, include the PHA’s cost of due diligence in marketing and cost to cure obsolete factors (e.g., cost to add a second bathroom to units with a high number of bedrooms).
- B. **De Minimis Demolition (24 CFR 970.27).** In any 5-year period, a PHA may demolish the lesser of 5 dwelling units or 5 percent of the total public housing dwelling units

without the need to obtain HUD approval under 24 CFR Part 970, provided the resulting space is used to meet the service or other needs of the residents or the PHA determines the unit(s) are beyond repair. Demolition criteria of 970.15 do not apply to de minimis demolitions. Prior to demolishing units under this authority, the PHA must submit information to HUD via IMS/PIC, including a description of the proposed units and other items required by 24 CFR 970.7(a)(1), (2), (12), (13), and (14), environmental review under Part 50 or 58, and required resident consultation pursuant of 24 CFR 970.9.

V. Eligibility and Application Process for Tenant-Protection Vouchers (TPV).

- A. **TPV Eligibility.** As part of HUD’s approval of a SAC application, a PHA may be eligible to receive Section 8 HCV assistance from HUD in the form of TPVs. The issuance of TPVs to a PHA does not occur automatically with SAC approval of an application. Instead, the PHA must apply separately for TPVs in accordance with HCV Funding Notice (see PIH Notice 2024-16 or any successor notice,) after SAC approves the SAC application.

HUD determines a PHA’s TPV award based on the relevant appropriations and other HUD-issued guidance (including the applicable year’s HCV funding notice). HUD’s approval of the SAC application indicates the maximum number of both relocation and replacement TPVs that a PHA may be eligible to receive.

Based on limited availability of TPV funding, HUD is limiting the maximum TPV awards to 25% of the units occupied in the last 24 months at the development for dispositions under the improved efficiency or effectiveness justification (see Section III.A.2 or Section III.A3.c of this notice). However, even if a PHA is not eligible to receive TPVs in a SAC-approved removal, the PHA must still comply with relocation requirements of 24 CFR 970.21.

- B. **TPV Application Process.** Refer to the SAC approval letter for TPV application process.

VI. Other Requirements.

- A. **Existing Financial Transactions.** A PHA with an approved transaction through the Capital Fund Financing Program (CFFP), Section 30 (including PHA Mortgaged Transaction (PMT)), Energy Performance Contracting (EPC), or Operating Fund Financing Program (OFFP) must comply with additional instructions provided by HUD regarding such financing and may not take any steps to implement a SAC-approved application without receiving confirmation from HUD that all applicable requirements of the financing are satisfied. The PHA must certify an existing financial agreement is not at risk because of the proposed demolition or disposition action.

- B. **Operating Fund Accuracy and Updating Days to Relocation.** As part of the SAC application, the PHA includes an estimated number of days from a SAC-approved application that it plans to start relocation. HUD recognizes relocation plans sometimes change. However, because HUD relies on relocation information to determine

Operating Funds, the PHA is responsible for ensuring the relocation information remains reasonably accurate. If days to relocation in a SAC application is not reasonably accurate, Asset Repositioning Fee (ARF) payments under 24 CFR 990.190 will be affected. See Notice PIH 2021-37 on how to update relocation dates. The PHA shall not preemptively relocate residents from the proposed public housing units prior to receiving a signed SAC application approval. Resident relocation shall follow the timeline approved in a PHA's SAC application.

- C. **Re-occupying Units Proposed for Demolition or Disposition.** 24 CFR 970.25(a) states a PHA should not re-rent units at turnover while HUD is considering a SAC application. However, due to community needs or for other reasons consistent with its PHA Plan, a PHA may decide it is in the best interests of the PHA, its residents, and the community to re-occupy vacated units that are under SAC review. If the PHA proposes demolition or disposition because units are structurally unsound, located in a floodway, or otherwise uninhabitable, the PHA cannot reoccupy the units. The PHA cannot re-occupy units after issuance of the 90-day relocation notice.
- D. **Reporting Requirements.** Within seven days of completion of the demolition or disposition (e.g., execution of the sale or lease contract for disposition), the PHA must report the action in IMS/PIC, or as directed in any successor system. On a case-by-case basis, HUD may require other reporting information.
- E. **False Certifications and HUD Enforcement.** Any person knowingly presenting a false, fictitious or fraudulent statement or claim in a HUD matter, including certifications and supporting documentation submitted with SAC applications, is subject to criminal penalties, civil liability, or administrative actions which HUD may prosecute. HUD may pursue debarment/suspensions of principals and PHAs, and any enforcement actions available including, but not limited to, injunctive relief and other equitable remedies. If you knowingly make a false statement, you may be subject to criminal and/or civil penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.
- F. **Civil Rights Requirements.** This notice does not modify a PHA's fair housing, civil rights, or accessible housing obligations. It does clarify those obligations with respect to public housing demolition/disposition under Section 18.
 - 1. **PHA Certification.** As part of the SAC application, the PHA must certify it will carry out the removal action in compliance with all applicable civil rights requirements, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, all regulations implementing these authorities, other applicable Federal, State, and local civil rights laws, and the duty to affirmatively further fair housing. A PHA's certification means that it will fulfill the requirements set out in HUD regulations found at Title 24 of the Code of Federal Regulations, including regulations in place at the time of this certification, and any

subsequently promulgated regulations governing the obligation to affirmatively further fair housing.

The PHA is always responsible for understanding and implementing the requirements of HUD regulations and policies and has a continuing obligation to affirmatively further fair housing in compliance with the 1968 Fair Housing Act, the Housing and Community Development Act of 1974, The Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998. (See 42 U.S.C. 3608, 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437C– 1(d)(16)). The PHA must also certify that, if HUD approves the SAC application, subsequent implementation complies with all applicable civil rights requirements, including environmental determinations for environmental justice.

2. **HUD Civil Rights Review.** HUD’s Office of Fair Housing and Equal Opportunity (FHEO) conducts a civil rights review of certain SAC applications based on the removal justification, which may include applications for non-dwelling property. Pursuant to 24 CFR 970.7(a)(17), HUD may request additional information, including information about the PHA’s compliance with nondiscrimination requirements in relocations under 24 CFR 970.21(a) and the PHA’s affirmatively furthering fair housing certification under 24 CFR 903.7(o).
3. **Disclosure of Remedial Orders and Compliance Agreements.** In its SAC application, the PHA provides a certification that the demolition or disposition does not violate any remedial civil rights order or agreement, voluntary compliance agreement, final judgment, consent decree, settlement agreement, or other court order or agreement (per 24 CFR 970.7(a)(16)). In addition, the PHA states whether it is operating under any Federal, State, or local remedial order, compliance agreement, final judgment, consent decree, settlement agreement or other court order or agreement, including but not limited to those related to fair housing or other civil rights finding of noncompliance. If the PHA is operating under such a document, it must provide a citation to the document and attach a narrative description explaining how the proposed demolition or disposition is consistent with such document.
4. **Federal Labor Standards and Economic Opportunity.** A PHA using HUD funds for demolition or disposition must comply with all applicable federal labor standards of Section 12 of the 1937 Act (42 U.S.C. 1437j) (Davis-Bacon) and requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C 1701u), as amended. Activities include but are not limited to demolition and resident relocation. Under Section 3 and 24 CFR Part 75, recipients of certain HUD financial assistance must provide employment, training, and economic opportunities to the greatest extent feasible to Section 3 residents or business concerns. Recipients of HUD funds have Section 3 obligations regardless of the amount of funds (see 24 CFR 75.3).

5. **Resident Consultation for Persons with Disabilities and Persons with Limited English Proficiency.** To ensure individuals with disabilities have reasonable opportunities to consult on the SAC application, the PHA must ensure communications and materials are accessible and in compliance with Section 504 of the Rehabilitation Act of 1973, 24 CFR 8.6, and the Americans with Disabilities Act of 1990, 28 CFR Parts 35.160-35.163. This includes ensuring that written and oral communications, including resident meetings, are provided in appropriate alternative formats as needed (e.g., Braille, audio, large type, accessible electronic communications, assistive listening devices, sign language interpreters, computer-assisted real time transcription of meetings, Brailled materials, large print documents, and accessible web-based and email communications).

In selecting locations for consultation with residents, the PHA must provide equal access for persons with disabilities by conducting sessions at locations that are physically accessible to persons with disabilities, including individuals who use wheelchairs. Individuals with disabilities must receive services in the most integrated setting appropriate to their needs, meeting the needs of qualified individuals with disabilities that fully enable interactions. The PHA should be guided by the goal of maximizing participation in an integrated setting so that residents with disabilities and residents without disabilities may hear and consider each other's views. Priority shall be given to on-site accessible locations (e.g., TV rooms or informal gathering places) even if this requires multiple sessions with smaller groups of residents.

Title VI of the Civil Rights Act of 1964, Executive Order 13166, HUD's guidance on Title VI and LEP discrimination (72 FR 2732), and regulations at 24 CFR Part 1 require the PHA to take reasonable steps to ensure meaningful access to their programs and activities for persons who have limited ability to read, speak, or understand English (i.e., individuals who have limited English proficiency or LEP persons). Written materials provided in English are to be provided in regularly encountered languages among the residents. The PHA may need to provide interpreters to communicate between different languages to ensure LEP persons have meaningful access. The PHA holds meetings in languages other than English to provide direct communication and participation.

VII. Relocation of Residents.

- A. **Relocation Requirements.** When residents will be displaced from their public housing units and/or public housing assistance due to a demolition and/or disposition, the PHA must follow relocation requirements at 24 CFR 970.21, and not the relocation requirements at 49 CFR Part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended. 24 CFR 970.21 states that a PHA must offer each family displaced by demolition or disposition comparable housing that meets housing quality standards (HQS) and is located in an area that is generally not less desirable than the location of the displaced persons. The housing must be offered on a nondiscriminatory basis, without regard to race, color, religion, creed, national origin, disability, age, familial status, or gender, in compliance

with applicable Federal and state laws. For persons with disabilities displaced from a unit with reasonable accommodations, comparable housing should include similar accommodations. The PHA is required to provide for the payment of the actual and reasonable relocation expenses of each resident to be displaced, including residents requiring reasonable accommodations because of disabilities. However, if the proposed acquisition, rehabilitation or demolition is to be carried out with HUD funds subject to URA requirements or is to be carried out with other HUD-funded activities subject to URA requirements the URA may apply to tenant relocations. Additionally, if CDBG or HOME funds are used in the demolition or with conversion of lower-income dwelling units to a use other than lower-income dwelling units, the project may be subject to section 104(d) of the Housing and Community Development Act of 1974, including relocation assistance and one-for-one replacement provisions under 24 CFR Part 42 subpart C.

- B. **Quality of Relocation Units.** In accordance with 24 CFR 970.21, PHAs must offer each family displaced by demolition or disposition comparable housing that meets housing quality standards (HQS). In addition, in accordance with 24 CFR 982.404, if the comparable housing offered is HCV assistance (tenant-based or project-based), the owner must maintain the unit in accordance with HQS. If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take enforcement action in accordance with 24 CFR 982.404.
- C. **Relocation Considerations.** If the PHA intends to build or otherwise provide affordable replacement housing for the public housing units proposed for removal, HUD recommends that the PHA give the residents who are relocated from the public housing units the first right to occupy the new replacements units.
- D. **Housing Search.** In accordance with 24 CFR 970.21, PHAs must provide any necessary counseling for residents that are displaced. When the PHA is relocating families with HCV assistance (including TPVs), HUD encourages the PHA to provide families with mobility counseling and utilize the HUD PIC HCV Program and the HUD Exchange Housing Mobility Toolkit. See [Notice PIH 2022-18](#) for guidance on the use of HCV ongoing administrative fees for expenses related to assisting HCV families to lease units.

VIII. **Technical Assistance.** Contact SACTA@hud.gov.

IX. Paperwork Reduction Act. 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, 2502-0612 and 2577-0075.



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Public and Indian Housing