



Special Attention of:

Public Housing Agencies
Public Housing Directors
Resident Management Corporations
Regional and Chief Counsels

Cross References: PIH Notices
2019-13 and 2014-24

Notice PIH 2019-14 (HA)

Issued: June 19, 2019

This notice supersedes and replaces
Notice PIH 2010-44 (HA), as
extended by Notice PIH 2011-61.
This notice remains in effect until
amended, superseded or rescinded.

Subject. Declaration of Trust or Declaration of Restrictive Covenants (DOT/DORC) Requirements

1. Overview. The Declaration of Trust and Declaration of Restrictive Covenants (DOT/DORC) are legal instruments granting HUD an interest in public housing property. They provide public notice that the public housing property must be operated in accordance with all federal public housing requirements, including the requirement not to convey or otherwise encumber the public housing property unless expressly authorized by federal law and/or HUD. See 24 CFR 905.108. The DOT/DORC takes priority over all other liens and property rights by being recorded on the property in “first position.” See 24 CFR 905.505(c)(4) and 905.600(c)(3).

2. Background. Public Housing Agencies (PHAs) must maintain valid DOT/DORCs on all public housing property so HUD can ensure public housing projects (as defined at 24 CFR 905.108) are used for public housing purposes. Public housing property is any real property acquired, developed, modernized, maintained, or operated with United States Housing Act of 1937 (the 1937 Act) funds (other than Section 8 assistance provided under the 1937 Act), including vacant land, appurtenances (e.g., public housing common areas and playgrounds) or non-dwelling property acquired with 1937 Act funds. Property that does not have an Asset Management Project (AMP) or identification number in IMS/PIC and/or property acquired with 1937 Act funds without HUD approval¹ are public housing property. Units constructed or rehabilitated under the Choice Neighborhoods Initiative (CNI), including replacement public housing units, use a CNI-specific DORC.

The requirement for PHAs to ensure a valid DOT/DORC is recorded against all public housing property is long-standing and well established by the 1937 Act, HUD regulations, the ACC, and HUD PIH Notices. A “valid DOT/DORC” means a DOT/DORC on an approved HUD form and recorded ahead of all other encumbrances, including liens, on all appropriate public housing property (including a legal description) covering the applicable statutory use term.

¹ If a PHA has acquired real property without HUD approval, it must immediately reach out to its Field Office and record a DOT/DORC against the property. In this instance, the DOT/DORC must remain in effect until either the 1937 funds are reimbursed to the PHA’s Operating Fund and/or Capital Fund or HUD has approved the disposition of the property.

Notwithstanding this requirement, HUD sometimes finds a DOT/DORC is not recorded against a public housing property. Non-compliance issues with DOT/DORC often come to HUD's attention in the processing of applications for conversions under the Rental Assistance Demonstration (RAD) program or Section 22 or 33 of the 1937 Act; dispositions under Section 18 of the 1937 Act; reviews under the Capital Fund Financing Program (CFFP), Operating Fund Financing Program (OFFP), Energy Performance Contract (EPC) with security interests under Section 30 of the 1937 Act; the Public Housing Mortgage Program with Section 30 security interests; and proposals for public housing mixed-finance development under 24 CFR 905.604. These applications may be delayed if a PHA is not in compliance with DOT/DORC requirements. A common situation involves PHAs unaware that their original DOT recorded at the time of acquisition or development is now expired with the liquidation, repayment and/or forgiveness of bond funds (i.e., New Housing Authority Bonds last sold in 1973 are now fully liquidated).

This notice serves to: (1) remind PHAs of their continuing legal responsibility to ensure a valid DOT/DORC is recorded against all of their public housing property; (2) remind PHAs they are required to be in full compliance with DOT/DORC requirements; and (3) provide guidance on adding and removing public housing units and other public housing property from IMS/PIC and ACC.

3. Term of DOT/DORC. Based on section 9 of the 1937 Act, the term of a DOT/DORC depends on the type of funds and type of work that has been done at the property. A DOT/DORC must remain of record until the latest expiration date required by the funds and/or activities at the public housing property. The following are some examples:

- A) **Acquisition or Development.** Public housing property acquired or developed with 1937 Act funds must be operated as public housing for a 40-year period beginning on the date the project becomes available for occupancy, as determined by HUD. See § 9(d)(3)(A) of the 1937 Act and 24 CFR 905.304(a)(1). This 40-year period is extended if a PHA uses other public housing funding, such as Capital or Operating Funds during the original 40-year term.
- B) **Modernization (Capital Funds).** Public housing property modernized or receiving assistance of Capital Funds must be operated and maintained as public housing for a 20-year period beginning on the latest date modernization is complete or assistance is provided under a Capital Fund ACC Amendment (HUD-52840-A (04/2018)). See § 9(d)(3)(B) of the 1937 Act and 24 CFR 905.304(a)(2). This 20-year period is extended if the PHA uses additional Capital Funds or Operating Funds for this public housing.
- C) **Operation (Operating Funds).** Public housing property receiving Operating Funds for public housing are restricted in use for a 10-year period beginning upon the conclusion of the fiscal year for which amounts were provided. See § 9(e)(3) of the 1937 Act and 24 CFR 905.304(a)(3).

The Development 40-year restricted use term would be extended beyond the 40 years for the longest of the following periods: (i) if a public housing project uses Capital Funds for modernization (adding an additional 20 years) or (ii) Capital Funds used for additional development (adding an additional 40 years) or (iii) Operating Funds after the 40-year term (adding an additional 10 years after the last payment of Operating Funds). Almost every public housing project uses both Capital Funds and Operating Funds, so the Modernization 20-year term is added every time Capital Funds are used for modernization activities at a public housing project. When Operating Funds are used, an additional 10-year term is added (often referred to as the 10-year "tail"). Thus, the DOT/DORC term would end: (1) if the ACC is terminated and the DOT/DORC is released; or (2) at the end of the cumulative period of restrictive use (40 years, plus all extra 20-year terms for Modernization funding, plus the 10-year tail for

Operating Funds). However, as explained further below in section 7 of this notice, the DOT/DORC is not released until a PHA requests a release from HUD and HUD approves it.

4. Form of DOT/DORC. A PHA does not need to record a new DOT/DORC unless there is not a validly recorded DOT/DORC encumbering the project. If a PHA needs to record a new DOT/DORC against a property, the PHA must use form HUD-52190 (4/2018). This form applies to public housing, including both conventional and mixed-finance public housing. PHAs do not need to enter into a new DOT/DORC each time they expend Section 9 funds for modernization work or receive Section 9 Operating Funds. Rather, the new DOT/DORC form contemplates multiple year uses of Section 9 funds at a public housing project and provides that each time Section 9 funds are used for modernization or development work and Section 9 Operating Funds are received, the corresponding 40-year plus 10-year tail or 20-year plus 10-year tail period renews. Form HUD-52190 (4/2018) is available at www.hud.gov/hudclips. PHAs must not use previous (now expired) HUD forms of DOT or DORC (including the forms HUD-52190-A, HUD-52190-B, and mixed-finance model DORC) when recording a new DOT/DORC. PHAs may not make any changes to the form HUD-52190 (4/2018) and must follow the instructions provided with form HUD-52190 (4/2018). PHAs must obtain HUD approval (from their local Field Office) prior to recording the DOT/DORC against the property.

5. Compliance Requirements. Based on the 1937 Act, HUD regulations and ACC, PHAs certify (with their 5-year and/or Annual Plan under 24 CFR part 903) compliance with all federal requirements, including DOT/DORC requirements. HUD considers PHAs to be in full compliance with DOT/DORC requirements when DOT/DORCs are recorded against all of their public housing property with legal descriptions. Even if a PHA obtains HUD approval to demolish all public housing property at a public housing project, if the underlying land was acquired with 1937 Act funds, the DOT/DORC remains valid unless and until HUD releases the DOT/DORC under an authorized authority (e.g., Section 18 of the 1937 Act, Rental Assistance Demonstration (RAD) statutory authority, or 2 CFR part 200). At any time, HUD may conduct monitoring to verify PHA compliance with DOT/DORC requirements. The requirement to maintain valid DOT/DORCs is auditable under the ACC.

If HUD determines a PHA is not in compliance with public housing requirements and PHA Plan certifications (e.g., by not maintaining valid DOT/DORCs on public housing property), it may take whatever action deemed necessary and appropriate, including but not limited to actions permitted under 2 CFR 200.207, 2 CFR 200.338, and Section 6(j)(4)(A) of the 1937 Act.

HUD does not require PHAs to revise and re-record valid DOT/DORCs based on the publication of HUD-52190 (4/2018), public housing unit counts, or changes to project or AMP numbers (i.e., information that does not change the real property covered by the DOT/DORC). However, PHAs must maintain an internal method to identify current project numbers for public housing property against which each DOT/DORC is recorded. A project number may correspond to part or all of the property under one or more DOT/DORCs.

Some PHAs have recently gone through the process of ensuring full compliance with DOT/DORC requirements in the course of RAD, Mixed-Finance, OFFP, CFFP and EPC transactions thereafter no additional actions necessary. Other PHAs may need to do a complete inventory of all of their properties and take affirmative steps to record valid DOT/DORCs. If PHAs use counsel, title companies or other entities to assist in verifying DOT compliance, HUD encourages PHAs to obtain a certification from the counsel or entity opining to compliance with HUD DOT/DORC requirements. Legal or other work associated with DOT/DORC compliance is an eligible use of Operating and Capital Funds.

6. Ongoing requirement to monitor DOTs. The requirement for PHAs to maintain valid DOT/DORCs is ongoing, and PHAs shall closely monitor their public housing property for compliance. HUD will not approve a PHA's 5-Year or Annual Plan unless the PHA certifies compliance with all federal requirements, including DOT/DORC requirements. HUD may pursue debarment/suspensions of principals and PHAs for non-compliance issues, and any enforcement actions available including, but not limited to, injunctive relief and other equitable remedies under HUD program and other federal authorities. See 18 U.S.C. §§ 1001, 1010 and 1012; 2 CFR 180 and 2424; 31 U.S.C. §§ 3729-3731; and 31 U.S.C. §§ 3801-3812. Procedures and possible consequences of a false or otherwise invalid civil rights certification under Section 5A of the 1937 Act are incorporated in HUD regulations at 24 CFR 903.7(o) and 903.15(d)(3).

7. Release of DORC/DOT. DOT/DORCs do not automatically terminate or expire from public records when HUD approves units or other property for removal from IMC/PIC and coverage under the ACC. PHAs must request a release of the DOT/DORC on property before closing/transferring title of public housing property based on an approved removal action. The PHA is responsible for preparing the release of DOT/DORC document for HUD signature. There is no HUD required (OMB-approved) form of DOT/DORC release, but HUD can provide PHAs with samples upon request. Prior to executing a DOT/DORC release, HUD confirms the property is approved for removal (additional documents, such as surveys and title reports, may be required) and all conditions in the HUD approval letter are satisfied. After HUD executes a DOT/DORC release, the PHA is responsible for recording the release document in applicable land records and providing evidence of recordation to the Field Office.

8. Annual Contribution Contract (ACC).

- A) Overview.** Any public housing property (dwelling units, non-dwelling units and buildings, and vacant land including appurtenances such as public housing common areas and playgrounds) is subject to the ACC (Form HUD-53012-A or predecessor or successor form) and must be classified in IMS/PIC under a project number.
- B) Removing units and other property from IMS/PIC and coverage under the ACC.** PHAs must obtain HUD approval to remove public housing property from the terms and conditions of the ACC through an authorized program as listed in section 7 of this notice. PHAs submit the Inventory Removals Form HUD-52860 (4/2018) and applicable addendum(s) via the IMS/PIC system to request HUD approvals under all listed programs other than RAD, HOPE VI and Choice Neighborhood Demolition.²
- C) Adding units and other public housing property to IMS/PIC and the public housing program.** Per PIH Notice 2011-69, some PHAs have authority to develop new public housing under their "Faircloth limit".³ Provided the PHA has Faircloth Limit authority, PHAs may add new units and/or other property to its public housing program covered by an ACC by submitting a conventional or mixed-finance development proposal under 24 CFR part 905. PHAs submit

² PHAs submit RAD applications via IMS/PIC to document ACC removals under RAD, per RAD protocols, but form HUD-52860 is not required. HUD staff internally record ACC removals approved under Choice Neighborhoods and HOPE VI demolitions in IMS/PIC.

³ PHAs that utilize a removal authority conditioned on PHA closeout (e.g., a PHA repositioning the last of its units under the "50 and under" disposition justification of Section 3.b. of Notice PIH 2018-04, under the streamlined voluntary conversion authority of Notice PIH 2019-05, or under the RAD streamlined authority for PHAs with 50 or fewer units) are ineligible to develop additional public housing units and must closeout their public housing programs.

conventional development proposals to their Field Offices. PHAs submit mixed-finance development proposals to HUD Headquarters Office of Public Housing Investments, Urban Redevelopment Division (URD). If HUD approves the development proposal, the new public housing units or other property are added to IMS/PIC under a project number. PHAs are required to be subject to the latest version of ACC.

- D) Terminating the ACC.** HUD terminates a current and active ACC with a PHA when all public housing units and other public housing property are removed from IMS/PIC in accordance with HUD's approvals and the PHA satisfies applicable closeout requirements. A PHA may closeout its public housing program through ACC termination (see PIH Notice 2016-23 or successor notice) or Consolidation/Voluntary Transfer (see PIH Notice 2014-24 or successor notice). Some removal authorities require a PHA to closeout their public housing programs and terminate their ACC with HUD.⁴

9. Inventory Management System/PIH Information Center (IMS/PIC).

- A) IMS/PIC Inclusion.** All public housing property (including units, non-dwelling buildings, and land) subject to an ACC must be documented in IMS/PIC under a project number⁵. IMS/PIC records are the official HUD count of units and property covered by an ACC. It is essential that PHAs and Field Offices ensure that removals and additions in IMS/PIC are accurately documented and maintained. The requirement to assure a DOT/DORC is recorded against public housing property is separate from the record-keeping requirement in IMS/PIC. A PHA must ensure that all of its public housing property is under a DOT/DORC and documented in IMS/PIC. If a PHA owns public housing property not in IMS/PIC, it should contact the Field Office. All property acquired, developed, modernized, maintained or assisted with 1937 Act funds is public housing property, regardless of status in the IMS/PIC system.
- B) Documenting ACC removals in IMS/PIC.** Units and other property removed from coverage by an ACC must be documented in IMS/PIC. HUD, through the Special Applications Center (SAC), documents removals from ACC when units are converted under RAD or demolished under the authority of Section 24 of the 1937 Act (in accordance with a HOPE VI or Choice Neighborhoods grants). For Section 18 demolitions and dispositions, in accordance with 24 CFR 970.35, PHAs report demolitions within one week of making the final payment to the demolition contractor or expending the last remaining funds if funded by force account; and report on dispositions within one week of the execution of the sale or lease contract. Field Offices confirm final Section 18 removals in IMS/PIC. For Section 22 voluntary conversion and Section 33 required conversions, PHAs follow IMS/PIC removal and reporting instructions outlined in the HUD approval documents. Units are officially "removed" from ACC coverage when "Removed from Inventory (RMI)" status is entered in IMS/PIC.
- C) Public Housing Subsidy and IMS/PIC.** HUD relies on IMS/PIC data to determine Operating and Capital Funds subsidy calculations and payments. PHAs refer to the specific removal program guidance for impacts to Operating and Capital Funds in 24 CFR parts 990 and 905 and other program guidance.

⁴ See previous footnote.

⁵ HUD encourages PHAs to upload surveys and legal descriptions (including acreage when possible) of public housing properties in IMS/PIC. This is typically required as part of a SAC or RAD application when a PHA is requesting to remove property from ACC and DOT/DORC.

D) Terminating public housing projects in IMS/PIC. HUD terminates a public housing project in IMS/PIC if all public housing property (units, buildings, and land) associated with that project is removed from the ACC and the DOT/DORC is released based on a HUD approval. In addition, as part of a closeout of a PHA under PIH Notice 2016-23 (or successor notice), HUD terminates all projects in IMS/PIC. Field Offices submit project termination requests to the SAC. Only the SAC is authorized to terminate projects in IMS/PIC.

12. Paperwork Reduction Act. The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 2501-3520). The OMB control numbers are 2577-0075 and 2577-0226. In accordance with PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

13. Technical Assistance. For technical assistance on DOT/DORCs, PHAs contact their Field Office. For technical assistance on SAC applications or IMS/PIC issues related to RAD applications, PHAs contact SACTA@hud.gov.

/s/
R. Hunter Kurtz, Principal Deputy Assistant Secretary
for Public and Indian Housing