



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

OFFICE OF PUBLIC AND INDIAN HOUSING

SPECIAL ATTENTION OF:

Public Housing Agencies;
Resident Management Corporations;
Public Housing Staff;

NOTICE PIH 2020-23 (HA)

Issued: September 9, 2020

Expires: This notice remains in effect until amended, superseded or rescinded

Cross-references: PIH Notices 2018-04 (HA), 2016-22 (HA), 2016-14 (HA), 2014-24 (HA), 2019-23, 2010-26 (HA), 1996-33 (HA), and any successors

Subject: Use of Proceeds under Section 18 Disposition or Section 22 Voluntary Conversion

1. Purpose. This notice provides guidance to public housing agencies (PHAs) on the requirements for obtaining approval from the U.S. Department of Housing and Urban Development (HUD) through the Special Applications Center (SAC) pursuant to 24 CFR 970.19(e) to use proceeds for authorized uses. PHAs may realize proceeds when they sell, transfer, ground lease or otherwise dispose of public housing property in accordance with section 18 of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437p) or section 22 of the 1937 Act (42 U.S.C. 1437t).

2. Applicability. This notice applies to proceeds PHAs realize from dispositions of property, unless a PHA already has a written HUD approval for the use of proceeds that was issued prior to the publication of this notice. PHAs must comply with the terms of HUD's approval and all applicable HUD and public housing requirements regarding the use and treatment of proceeds already approved by the SAC. This notice does not apply retroactively to approved applications. Further, pursuant to the Moving to Work (MTW) authorizing statute, section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134), there are no waivers to section 18 of the 1937 Act under MTW authority. Accordingly, this notice applies to the use of proceeds by MTW PHAs. Additionally, section 22 of the 1937 Act provides that any proceeds a PHA realizes from a voluntary conversion (including streamlined voluntary conversion pursuant to PIH Notice 2019-05) are subject to the limitations that are applicable under section 18(a)(5) to proceeds resulting from the disposition of public housing. Therefore, proceeds realized from a voluntary conversion are subject to this notice.

3. Authority. The eligible use of proceeds from public housing disposition is governed by statute in section 18(a)(5) of the 1937 Act and HUD regulation at 24 CFR 970.19(e).

4. Overview. PHAs retain flexibility to determine the use of net proceeds, provided the use is consistent with section 18(a)(5)(B) of the 1937 Act which requires that net proceeds be used for the "provision of low-income housing or to benefit the residents of the public housing agency; or leveraging amounts for securing commercial enterprises, onsite in public housing projects of the public housing agency, appropriate to serve the needs of the residents." The term "low-income housing" is defined in section 3(b)(1) of the 1937 Act as decent, safe, and sanitary dwelling units assisted under the 1937 Act, and includes a public housing unit under section 9 of the 1937 Act, a project-based voucher (PBV) unit or project-based rental assistance (PBRA) unit under section

8 of the 1937 Act, a rental unit or homeownership unit assistance under section 8(o) or 8(y) of the 1937 Act, or a homeownership unit developed under sections 9, 24 or 32 of the 1937 Act. A PHA's use of proceeds is subject to HUD approval pursuant to 24 CFR part 970. The process for obtaining HUD approval and expending proceeds is as follows:

- A. The PHA describes its proposed use of proceeds in its application (using form HUD-52860-A, HUD-52860-D, or HUD-52860--E)¹, to HUD's SAC (SAC application), and certifies that its use of proceeds complies with section 18 of the 1937 Act and applicable requirements of 24 CFR part 970.
- B. SAC reviews the proposed use of proceeds, and if compliant with section 18(a)(5) of the 1937 Act, 24 CFR 970.19(e), and this notice approves the use as part of the application approval. SAC may require additional information from a PHA to support a proposed use of proceeds.
- C. Immediately after receiving proceeds, the PHA deposits the proceeds into an account subject to the HUD General Depository Agreement HUD-51999 (GDA).
- D. The PHA uses proceeds in accordance with SAC approval and this notice.
- E. The PHA reports on its use of proceeds pursuant to section 11 of this notice and 24 CFR 970.35.

5. SAC Review. SAC shall determine whether a PHA's proposed use of proceeds is an eligible use under the requirements of section 18(a)(5) of the 1937 Act and 24 CFR 970.19. PHAs describe their intended use of proceeds in the SAC application submitted electronically through the Inventory Management System/Public and Indian Housing (PIH) Information Center (IMS/PIC). A PHA's use of proceeds must also be consistent with applicable civil rights and fair housing laws, including the requirements listed at 24 CFR 5.105(a). As part of the SAC application, the PHA certifies compliance with civil rights requirements.² Environmental review requirements, as found in HUD regulation at 24 CFR part 50 and 24 CFR part 58 and in PIH Notice 2016-22 (HA) apply to activities carried out with proceeds. If, subsequent to HUD approval of the SAC application, the PHA determines a use for net proceeds different from that proposed in the application, then the PHA must ensure, subject to potential HUD enforcement, that the alternate use fully complies with the requirements of section 18(a)(5), 24 CFR 970.19(e), and sections 8 and 9 of this notice, and that such alternate use is properly documented compliant with 24 CFR 970.35 and section 11 of this notice.

¹ For disposition, pursuant to 24 CFR 970.7(a)(10), the HUD-52860-A requires the PHA to "include a brief narrative, budget or other supporting documentation describing the proposed use of proceeds." For voluntary conversion, the HUD-52860-E requires the PHA to describe the future use of the property, which includes transfers and use of proceeds.

² HUD's Office of Fair Housing and Equal Opportunity (FHEO) may consider a PHA's use of proceeds as part of its civil rights review of disposition applications. See PIH Notice 2018-04.

6. Internal PHA Approvals and Consultations. PHAs must actively consult with and involve their Board of Commissioners, residents and resident groups, local government officials and the public (through the PHA Plan or MTW Plan process) concerning the proposed use of proceeds as part of the SAC application consultation and review processes. See 24 CFR 970.7(a)(1), (13), (14); 24 CFR 970.9; 24 CFR part 903. Consultation must occur in a manner that ensures effective communication with persons with disabilities (see 24 C.F.R. 8.6 and 28 C.F.R. 35.160-35.164) and meaningful access for persons with Limited English Proficiency (LEP) in accordance with HUD's LEP Guidance, 72 FR 2732 (2007).

7. Eligible Use of Gross Proceeds. 24 CFR 970.19(b) authorizes PHAs to deduct the costs of relocations and reasonable costs of disposition (transaction costs) from gross proceeds, if approved by HUD.

A. **Relocation Costs.** Pursuant to 24 CFR 970.21(e)(2), PHAs pay for actual and reasonable relocation expenses for all residents displaced from their public housing units as a result of a demolition and/or disposition action, including residents requiring reasonable accommodations because of disabilities. Eligible relocation costs deductible from gross proceeds may include: (a) counseling and advisory services to residents (including mobility counseling); (b) moving expenses (including housing search costs); (c) application fees; (d) payment of a security and/or utility deposits at a comparable housing unit;³ and (e) costs of any necessary reasonable accommodations under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and PIH Notice 2010-26.

B. **Reasonable Costs of Disposition** may include the following: (a) reasonable and necessary costs PHAs incur in preparing the HUD-52860 (e.g., environmental studies, engineering costs of rehab estimates, and appraisal fees); and (b) transactional (seller) closing costs (e.g., local customary split of any brokerage fees, appraisal fees, survey costs, tax certificates fees, fees for recording the Declaration of Trust/Declaration of Restrictive Covenants (Form HUD-51290 (4/2018) (DOT/DORC)) release, notary fees, title insurance fees, title company document preparation and closing fees, mailing and wire transfer fees, and reasonable attorney and broker fees), provided such costs are listed on the HUD-1 or other applicable settlement statement document. HUD has not approved: seller credits (e.g., for repairs and buyer's share of closing costs) agreed upon during sale contract negotiations or costs for repairs. Seller credits are reflected in the property's fair market value (FMV) during the public bid process.

8. Eligible Use of Net Proceeds. After a PHA uses gross proceeds to pay for the reasonable costs of disposition and relocation costs for displaced residents, a PHA must use net proceeds in accordance with 24 CFR 970.19(e). Unless HUD grants Annual Contribution Contract (ACC) and regulatory waivers, PHAs must use net proceeds to pay off outstanding obligations issued to

³ If the PHA pays a security and/or utility deposit directly to the landlord or utility company, then the PHA must receive any returns or refunds of the deposits. The PHA must treat any returned deposits as proceeds in accordance with this notice.

finance the original public housing development or modernization, if any. If any net proceeds remain after retiring outstanding obligations, pursuant to 24 CFR 970.19(e)(2), PHAs may use net proceeds for the provision of low-income housing (for example, through cash contribution or as long-term financing), to benefit the residents of the PHA, or to leverage amounts for securing commercial enterprises on-site in public housing projects, appropriate to serve the needs of the residents, including as described below:

A. Modernization and Development of Public Housing. PHAs may use proceeds for eligible uses of Capital Funds under 24 CFR part 905 with no reduction and/or offset to future Capital Funds, including payment of outstanding obligations resulting from Operating Fund Financing, Energy Performance Contracting, Capital Fund Financing or other Section 30 approved financing (e.g., Public Housing Mortgage Program).⁴ Applicable requirements of 24 CFR part 905 apply when proceeds are used for Capital Fund activities.⁵ The PHA identifies proceeds in its Capital Fund Program (CFP) 5-Year Action Plan and CFP Annual Plan, through the Environmental and Performance Information Center (EPIC) system, prior to obligating or expending, and in other HUD submissions. If a PHA is proposing to use proceeds as part of a public housing mixed-finance development, the proceeds should be included in the sources as a public housing source. Any modernization or development of public housing must comply with applicable accessibility standards, including under Section 504, the Americans with Disabilities Act, and the Fair Housing Act.

B. PBV Projects (Costs to PBV Project Owner).⁶ PHAs may use proceeds for costs related to the development or acquisition of PBV Projects as follows:

1. **Newly Constructed/Rehabilitated Housing.** Proceeds may be used for PBV Development (including land acquisition) of Newly Constructed Housing and Rehabilitated Housing, as those terms are defined in 24 CFR 983.3.⁷ Proceeds are described as a source of funds in the development budget. The scope of work (use of proceeds) is described in the Agreement to Enter into Housing Assistance Payment (AHAP) Contract. Proceeds may be used for hard construction or rehabilitation costs; funding of reserves account; reasonable soft costs; property acquisition costs; and reasonable predevelopment costs associated with the development. Any

⁴ See 24 CFR 905.505(n)(6). HUD may require repayment of the debt whenever more than 5% of the units are disposed of and the debt exceeds 33% of the future Capital Funds.

⁵ 24 CFR 905.108 defines public housing funds to include disposition proceeds. The development of public housing units (conventional or mixed finance) is limited by the Total Development Costs (TDC) limits of 24 CFR 905.314.

⁶ This section does not include costs that PHAs may incur as PHA administrator of a PBV program. However, these costs may be eligible uses of proceeds. See section 8(F) of this notice.

⁷ Under 24 CFR 983.3: Development means construction or rehabilitation of PBV housing after the proposal selection date; Rehabilitated Housing means housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program; Newly Constructed Housing means housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

construction or rehabilitation must comply with applicable accessibility standards, including under Section 504, the Americans with Disabilities Act, and the Fair Housing Act.

2. Existing Housing. Proceeds may be used to bring projects under a Housing Assistance Payment (HAP) Contract as Existing Housing, as defined in 24 CFR 983.3.⁸ Proceeds are generally used for property acquisition costs, but can also be used for minor property repairs and upgrades prior to HAP execution. PHAs may contribute proceeds to PBV Projects that include non-PBV units (e.g., market-rate or Low-Income Housing Tax Credit (LIHTC)-only units), provided the proceeds are contributed on a pro-rata basis to the PBV units.

The SAC application for disposition (Form HUD-52860-A) requests a “brief narrative, budget or other supporting documentation describing the proposed use of proceeds.” The SAC application for voluntary conversion (HUD-52860-E) requests a description of future use, including any planned disposition. In its submission, the PHA identifies if proceeds will be used for Newly Constructed/Rehabilitated or Existing Housing, the amount of proceeds it will use, and how the proceeds will be contributed (cash or loan). The PHA must evidence that it has a plan to acquire and/or develop the housing and attach a section 8 PBV Housing Assistance Payment (HAP) Contract to that housing, by including supporting documentation, which may include (as applicable):

- (a) Draft Sources and Uses (if available).
- (b) Brief description of the PBV Project, including number of total units; number of PBV units; number of designated accessible mobility units, designated accessible sensory units, and units with accessibility features; and anticipated financing sources. If Newly Constructed/Rehabilitated Housing, a statement that the PHA has evaluated the project and determined that it complies with 24 CFR 983.57;
- (c) Statement as to how the PHA determined the contribution of proceeds is reasonable (e.g., per unit development cost is similar to total development cost (TDC) limits for public housing units).
- (d) Anticipated date of HAP execution.
- (e) Planning and execution steps taken, including: whether the PHA has sent a notification email to HUD for program cap calculation purposes; whether a selection letter was transmitted to the owner-entity; whether the PHA included the PBV units in its PHA Annual Plan or Annual MTW Plan; whether the environmental review has been completed; and, for newly constructed/rehabilitated projects, whether the Subsidy Layering Review (SLR) has been completed; and whether the PHA and owner have executed AHAP per 24 CFR part 983 subpart D.
- (f) Name of owner of PBV Project and brief description of the ownership structure. Note that the PBV Project may but does not need to be “PHA-owned” (as defined

⁸ Under 24 CFR 983.3, Existing Housing means units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

by the Housing Opportunity Through Modernization Act (HOTMA), Public Law 114-201 § 105, 130 Stat. 782, 796; see also PIH Notice 2017-21 Attachment A). PHAs, including PHAs administering only Public Housing, may contribute proceeds to a third-party for PBV development).

- (g) Statement that the administrating agency has an established PBV program (as part of its Housing Choice Voucher (HCV) program).
- (h) The expected length of time the PHA expects the property will be operated as a PBV Project (e.g. 20-year HAP contract).⁹
- (i) If proceeds will be used for PBV Project predevelopment expenses, an itemized list of necessary and reasonable predevelopment costs, based upon a consideration of the nature and scope of activities proposed to be carried out by the PHA.

PHAs must comply with all applicable PBV program requirements including section 8(o)(13) of the 1937 Act (as amended by HOTMA, Public Law 114-201, 130 Stat. 782), HUD regulation at 24 CFR part 983, and other applicable HUD guidance. These include, but are not limited to, HOTMA Federal Register (FR) Implementation Notice at 82 FR 5458 (January 18, 2017), 82 FR 32461 (Jul. 14, 2017) (HOTMA Correction), 85 FR 12001 (Feb. 28, 2020) (SLR), PIH Notice 2017-21 (HA), and environmental requirements outlined in PIH Notice 2016-22 (HA). For both Newly Constructed/Rehabilitated Housing and Existing Housing, PHAs may not commit or expend proceeds for property acquisition (land and/or improvements) that are intended for a PBV Project until an environmental review is completed. See 24 CFR 983.58 and guidance at PIH Notice 2016-22.

- C. **Operation of Public Housing.** PHAs may use proceeds for eligible uses of Public Housing Operating Funds under section 9(e) of the 1937 Act, with no reduction and/or offset to future Operating Funds. Applicable requirements of 24 CFR 990 apply. A PHA cannot use proceeds to fund PHA salaries that exceed the salary restrictions in HUD Appropriations Acts. See also PIH Notices 2016-14 (HA) and 2019-21 (HA).
- D. **Rental Assistance Demonstration (RAD) Conversions.** PHAs may use proceeds as a source of capital to support RAD conversions, including development costs, rehabilitation costs, or other related transactional costs, subject to SAC and Office of Recapitalization approval. Proceeds are identified in the RAD financing plan or other RAD documents as a source of funds in the RAD Conversion Commitment (RCC). If HUD approves proceeds for RAD project-based section 8 units (PBV or PBRA), applicable requirements identified in the Notice H-2019-09 PIH-2019-23(HA) or successor notices apply.
- E. **Commercial Uses.** Per 24 CFR 970.19(e)(2)(ii), PHAs may use proceeds to leverage commercial enterprises, on-site in public housing developments appropriate to serve resident needs.

⁹ On a case-by-case basis, HUD may require the recordation of a first-priority use restriction against the property to ensure the long-term use of the property as PBV housing. Factors include the amount of proceeds contributed, the duration of the proposed HAP contract, and whether there will be other use agreements recorded (e.g., LIHTC Extended Use Agreement).

F. Increasing the Supply, Availability and Utilization of Low-income Housing. PHAs may use proceeds for expenses incurred in providing low-income housing, including expenses to increase and improve the supply, availability, and/or utilization of low-income housing to their communities.

With respect to the HCV tenant-based and PBV programs, PHAs may use proceeds to cover administrative expenses and other activities, such as those related to: (1) increasing the number of families assisted under the 1937 Act; (2) expanding housing opportunities for low-income families in low-poverty areas/areas of opportunity and non-minority concentrated areas; (3) implementing and administering special housing types in HCV, including but not limited to section 8(y) homeownership; and/or (4) helping to serve special populations, such as homeless, veterans, and individuals with disabilities (including assisting individuals with disabilities in finding accessible units, making physical modifications to units, and exception rents).

Examples of administrative expenses for the above could include, but are not limited to, costs related to:

- improvements in the PHA's capacity to effectively manage its HCV leasing and utilization.
- HCV program marketing and owner recruitment efforts.
- improvements to the leasing process (e.g., more timely initial unit inspections).
- housing search assistance, mobility counseling (both pre and post move).
- efforts to define and identify areas of opportunity.
- implementation of Small Area Fair Market Rents (SAFMRs) and/or exception payment standards.
- creating and/or strengthening partnerships with other PHAs and/or other stakeholders to improve regional or metro HCV operations and cooperation.
- implementation and administration of special housing types.
- section 8(y) homeownership counseling costs, including post-purchase counseling.
- efforts to increase HCV effectiveness in serving the homeless and other vulnerable populations, such as partnerships, outreach, identifying and implementing process improvements, covering additional costs associated with administration of special purpose vouchers.
- other activities including but are not limited to providing financial assistance for families to help with cost of application fees; security and utility deposits; and
- administrative costs associated with the PBV program, such as running a PBV competition, making the selections, carrying out PHA pre-HAP responsibilities.

G. Other Uses Approved by HUD. PHAs may request other use of not specifically described in this notice, provided the use is consistent with the 1937 Act and HUD regulations including 24 CFR part 970. The SAC reviews requests on a case-by-case basis.

9. Ineligible Uses of Net Proceeds. The following uses are not consistent with section 18(a)(5) of the 1937 Act and accordingly, PHAs cannot use proceeds for the following uses. This list is non-exhaustive and there may be other non-eligible uses of proceeds that PHAs propose to HUD.

- A. **Development of Units Not Assisted with section 8 or section 9 Funding of the 1937 Act.** PHAs shall not use proceeds to develop units other than public housing units developed under 24 CFR part 905 or units developed as section 8 PBV, Project-Based Rental Assistance (PBRA), RAD section 8 PBV or RAD PBRA.
- B. **Proceeds Already Expended (Retroactive Approval Requests).** HUD will not approve a PHA's request to use proceeds if it has already expended the proceeds, even if it expended them on an otherwise approvable use. PHAs should notify the SAC and their local Office of Public Housing if they have expended proceeds without HUD approval. In its full discretion, HUD may determine whether to take enforcement action against the PHA.

10. Public Housing Closeout. If a PHA is closing out its section 9 public housing program and terminating its Public Housing ACC, prior to closeout, the PHA must satisfy all terms, conditions, and obligations of its section 18 approval documents, including proceeds. It may be necessary to amend the disposition approval relating to proceeds, especially if the PHA has unobligated and/or unexpended proceeds. See section 6(D) of PIH Notice 2019-13 (HA), Public Housing ACC Termination and PHA closeout.

11. Reporting and Record-keeping Requirements.¹⁰

- A. **Receipt/Financial Reporting.** PHAs record the receipt of proceeds on their financial data schedules (FDS) submitted to HUD. PHAs record proceeds as a "restricted" asset on the associated project's FDS.¹¹ For projects terminated in IMS/PIC, the PHA records proceeds in the "Other Project Column" of the Low Rent Program.
- B. **Expenditure/Financial Reporting.** PHAs record the use of proceeds in accordance with 24 CFR 990.280 and 990.285. Such recordation may include transferring proceeds from the original project to another permitted project or program. Such recordation may also include expensing proceeds in the original project and reporting the proceeds as revenue in another entity (blended component unit, discretely presented component unit, or independent third party).
- C. **Record-Keeping.** PHAs retain records related to the receipt and use of proceeds for HUD review and monitoring to determine compliance with applicable laws and other guidance including this notice. PHA records are retained for not less than three years.

¹⁰ PHAs must follow these requirements for all uses of proceeds, even if used for purposes that are subject to other requirements. For instance, if a PHA uses proceeds for Capital Fund purposes, PHAs comply with the applicable reporting and record-keeping requirements that are outlined in this section and not the requirements for Capital Funds in 24 CFR part 905.

¹¹ Proceeds are a "restricted asset" because they may only be used for the specific purposes approved by HUD in accordance with section 18(a)(5) of the 1937 Act, 24 CFR 970.19, and this notice.

D. Other Reporting. Pursuant to 24 CFR 970.35, on a case-by-case basis, HUD may require PHAs to submit additional reporting on their use of proceeds. In accordance with HUD's 2020 Compliance Supplement (or subsequent revisions), auditors confirm proceeds use.

12. Enforcement. PHAs are responsible for assuring their proceeds are used in accordance with all applicable federal requirements. If HUD determines a PHA failed to deposit, use, and report on proceeds as required by this notice and/or other applicable federal requirements regarding proceeds, HUD may take whatever action is 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. A PHA's use of proceeds is subject to audit by the HUD Office of Inspector General and the Government Accountability Office.

13. Technical Assistance. PHAs may request technical assistance about this notice by contacting SACTA@hud.gov.

14. 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 number is 2577-0075.

15. Public Comments. HUD welcomes public comments on this notice. Comments may be submitted to HUD via email at SACTA@hud.gov or to HUD's SAC, 77 W. Jackson Blvd. Chicago, IL 60604. HUD recommends that commenters organize comments by specific sections of the notice to assist HUD with the subsequent review and response. Further, provide a clear explanation of any views and reasoning, outline the basis for any assumptions, and provide any supporting evidence or data, wherever possible. If you disagree with an aspect, provide alternatives that would allow for the reasonable implementation of your suggestions, and add an analysis of how your alternative(s) better serve the public interest with specific examples to illustrate your concerns, where possible.

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