

Guidance for Housing Finance Agencies (HFAs) and PHAs Ground Leases and Purchase Options to establish LIHTC Site Control

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The contents of this document, except when based on statutory or regulatory authority or law, does not have the force and effect of law and is not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

This document provides answers to frequently asked questions regarding the use of Public Housing Funds for repositioning. Please contact your local PIH Field Office or email Repositioning@hud.gov if you have questions.

Background. HUD is aware that PHAs have sometimes executed ground leases as a way to demonstrate site control when applying for Low Income Housing Tax Credits (LIHTCs) or tax-exempt bonds for redeveloping public housing property. In most states, execution of a ground lease, even if not recorded, constitutes a conveyance or disposition of the property. After discussions with various Housing Finance agencies, we issue the guidance below for the benefit of both HFAs and PHAs.

Guidance for Housing Finance Agencies

- Execution of a Ground Lease or execution of a deed (even if not recorded) by a PHA represents a conveyance or disposition which triggers violations of the PHA's Annual Contributions Contract (ACC) with HUD and possible environmental concerns under 24 CFR part 58.
- For applicants with proposed developments with an existing Declaration of Trust (DOT) between a PHA and HUD, there should be an option in the funding announcement request to satisfy site control by providing an Option to Enter into a Ground Lease Agreement between the applicant and the owner of the land/property.

Instructions for PHAs. To avoid a possible violation of the environmental requirements in 24 CFR part 58, and the Annual Contributions Contract (ACC) a Ground Lease should not be executed when seeking redevelopment funding or low-income housing tax credit (LIHTC) allocations. This applies to all public housing properties subject to an environmental review under any HUD program, including but not limited to, Rental Assistance Demonstration, Section 18, and Section 22. Instead, an Option to Enter into a Ground Lease Agreement should be executed. The option agreement should include the following or similar language:

*The property is encumbered by a DOT (in favor of HUD) [include the recording reference of such]. The proposed Ground Lease will include any HUD required model language. Neither Owner nor Optionee shall have any obligation to lease the land/property, and no transfer of a leasehold or fee title interest to Optionee may occur, unless and until HUD has provided a written notification that HUD has completed a Federally required environmental review and, subject to any other contingencies of that approval notification. Prior to execution of the Ground Lease or transfer of fee title, HUD's disposition approval under Section 18 or other pertinent statute must be obtained; any existing residents of dwelling units on the property must be relocated, as necessary and consistent with applicable relocation requirements, if required by HUD; *any HUD approved demolition actions on the property must be completed.*

*NOTE: this provision may need to be tailored on a case-by-case basis, depending on the type of the Section 18 approval, and the timing of the demolition. For example, if PHAs want to carry out the demolition while the property is still under DOT (prior to disposition), a demolition AND disposition application must be submitted. But if the demolition will be carried out by the new (LIHTC) entity as part of the redevelopment/new LIHTC unit construction, PHAs should submit a disposition only application indicating that the units will be demolished after disposition and the property will be redeveloped with new construction affordable units.

Any use agreements required by the Section 18, RAD, Section 22 or other HUD approval must be approved by HUD prior to recording. HUD will execute a release of the DOT and allow the ground lease execution or transfer of fee title to occur once the Section 18 disposition approval has been issued.