

# Transfers

## Contents

1	Chapter Overview.....	3
2	Types of Transfers.....	3
2.1	Demolition, Disposition, Revitalization or Rehabilitation, including Rental Assistance Demonstration (RAD) Conversions.....	3
2.2	Emergency Due to Physical Hazards .....	4
2.3	Emergency Due to Other Causes .....	5
2.4	Reasonable Accommodation.....	5
2.5	Occupancy Standards.....	6
2.5.1	Split Family Transfers.....	6
2.5.2	Household Composition Changes .....	7
2.6	Incentive .....	8
2.7	Tenant-Initiated .....	8
2.8	Transfers under the Violence Against Women Act (VAWA).....	8
3	Priorities Among Types of Transfers.....	8
3.1	When Transfers Take Precedence Over Waiting List Admissions.....	9
3.2	Mandatory and Optional Transfers.....	9
4	Eligibility for Transfers.....	10
5	Cost of Transfers .....	10
6	Processing Transfers.....	11

The Coronavirus Aid, Relief and Economic Security (CARES) Act (Public Law 116-136) provides the US Department of Housing and Urban Development (HUD) with broad authority to waive or establish alternative requirements for numerous statutory and regulatory requirements for the Public Housing program. Through [Public and Indian Housing \(PIH\) Notices](#), HUD established temporary waivers and alternative requirements to be used at the discretion of the PHA and which may provide for flexibilities from some of the statutory and regulatory requirements described in this document. HUD strongly encourages PHAs to utilize any and all waivers and alternative requirements as necessary to keep Public Housing programs operational to the extent practicable during the COVID-19 pandemic.

Please visit [https://www.hud.gov/coronavirus/public\\_housing\\_agencies](https://www.hud.gov/coronavirus/public_housing_agencies) for the latest COVID-19-related resources, including relevant PIH Notices.

# 1 Chapter Overview

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Each Public Housing Agency (PHA) encounters situations in which families must move, or transfer, from one unit to another. This chapter discusses the most common types of transfers, how to prioritize transfers and a PHA's administrative responsibilities. HUD strongly encourages PHAs to establish policies in their Admissions and Continued Occupancy Policy (ACOP) that clearly state:

- The types of transfers recognized by the PHA;
- The priority among types of transfers;
- The types of transfers that take precedence over waiting list admissions;
- The types of transfers that are mandatory and those that are optional;
- The eligibility requirements for optional transfers;
- The costs associated with transfers and who bears the costs; and
- The procedure for processing transfers.

## 2 Types of Transfers

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Most PHAs recognize several types of transfers. The eight most common types of transfers are described below.

### 2.1 Demolition, Disposition, Revitalization or Rehabilitation, including Rental Assistance Demonstration (RAD) Conversions

PHAs must provide transfers or alternative housing to families when necessary to demolish, sell, or do major revitalization or rehabilitation work at a building or site.<sup>1</sup> A PHA may demolish, and/or dispose of public housing with HUD approval through an application process. HUD sets certain requirements associated with the application process, such as inclusion of the proposed demolition and/or disposition in PHA Plans, resident consultation, civil rights and environmental reviews, and other threshold requirements.<sup>2</sup>

A PHA may also choose to revitalize or rehabilitate distressed public housing through the use of Capital Funds or other redevelopment funding sources such as the RAD.<sup>3</sup> RAD is another preservation tool that allows PHAs to improve or modernize public housing. Through RAD, a PHA may apply to convert all or a portion of its public housing stock to long-term project-based Section 8 contracts. In some instances, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655) (URA), will require PHAs to provide resources to relocate displaced families. These resources may include comparable housing, payment of actual and reasonable relocation expenses, and counseling.<sup>4</sup>

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<sup>1</sup> 42 U.S.C. § 1437p(4)(A)(iii); 24 CFR § 970.21(a)

<sup>2</sup> 24 CFR § 970.7(a); Notice PIH 2018-04 (HA)

<sup>3</sup> 24 CFR § 905.600(d)

<sup>4</sup> 24 CFR § 970.21(a)

A summary of relocation obligations for RAD-converted developments, Section 22 Voluntary Conversions, and Section 18 Demolition/Disposition is as follows.

### **RAD-converted Developments**

The PHA may provide families with tenant-based assistance such as assistance under the Housing Choice Voucher (HCV) Program; transfer families to a project-based housing unit, or transfer families to other public housing units. The transfer or alternative housing arrangement must be comparable housing that meets housing quality standards (be decent, safe, and sanitary); be located in an area that is generally not less desirable than the location of the displaced persons; and include similar accommodations for persons with disabilities displaced from a unit with reasonable accommodations.<sup>5</sup>

### **Section 18 Demolition/Disposition**

If residents are relocated 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 URA, as amended. However, if subsequent acquisition, rehabilitation, or demolition carried out with HUD funds or carried out with other HUD-funded activities causes residents to relocate, the URA may apply to those relocations. Additionally, if Community Development Block Grant (CDBG) or HOME Investment Partnerships Program 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.

### **Section 22 Voluntary Conversions**

To the extent that tenants are displaced as a direct result of demolition, acquisition, or rehabilitation of real property that receives federal financial assistance through the conversion of public housing as described in the *Streamlined Voluntary Conversions of Last Remaining Projects of Small Public Housing Agencies* notice (Notice PIH-2019-05), the requirements of the URA, and its implementing regulations at 49 CFR part 24 apply.

## **2.2 Emergency Due to Physical Hazards**

In certain cases, PHAs must provide an emergency transfer when there is damage to a family's unit or building, or the site poses an immediate hazard to the life, health, or safety of an occupant. If alternative accommodations are available and the PHA cannot make the necessary repairs within a reasonable amount of time, PHAs are required to provide the family with alternative housing. The family is entitled to alternative accommodations even if the tenant, household member, guest, or other covered person is responsible for the damage that caused the hazard or if a family is in the process of being evicted.<sup>6</sup>

Examples of such unit or building conditions may include:

- Fire damage;
- A gas leak;

<sup>5</sup> Notice H-2019-09 PIH-2019-23 (HA) *Rental Assistance Demonstration – Final Implementation, Revision 4*; H 2016-17 PIH 2016-17 (HA) *Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component –Public Housing Conversions*.

<sup>6</sup> 24 CFR § 966.4(h)

- Lack of water or heat in the building during the winter;
- Toxic contamination; or
- Serious water leaks.

For the PHA to remain compliant with its lease obligations, any condition that would produce an emergency work order would qualify a family for an emergency transfer if the repairs cannot be made within 24 hours. In emergency situations when no other appropriate public housing units are available, it is common practice for PHAs to provide families with a HCV or cover the cost of hotel accommodations until repairs are made or a transfer to alternative housing is completed.

### **Physical Hazard Transfers Due to Lead Reduction**

*When a PHA conducts lead hazard reduction activities in a unit, it must protect families and their belongings, which can sometimes mean transferring families temporarily.<sup>7</sup> PHAs must prevent families from entering the worksite until after hazard reduction work has been completed and clearance, if required, has been achieved.<sup>8</sup> In some cases, families may have to be temporarily relocated to a suitable unit that is free of lead-based paint hazards before and during the hazard reduction activities.<sup>9</sup> Families are obligated to comply with these types of transfers.<sup>10</sup>*

## 2.3 Emergency Due to Other Causes

A PHA may allow for a transfer to:

- Alleviate a verified medical condition of a life-threatening nature;
- Alleviate a threat assessed by a law enforcement professional; or
- Protect members of the household from criminal activity at the property or in the neighborhood.

## 2.4 Reasonable Accommodation

PHAs may authorize reasonable accommodation transfers when a family member requires an accessible unit due to a disability. This kind of transfer may be requested for a variety of reasons, including, but not limited to:

- The family's need for a ground floor unit because of mobility issues; or
- The family's need for a unit with certain physical features that are not available in the current unit and which cannot be retrofitted without undue financial and administrative burden to the PHA.<sup>11</sup>

<sup>7</sup> 24 CFR § 35.1345(a)(2); 24 CFR § 35.1345(a)(3)

<sup>8</sup> 24 CFR § 35.1345(a)(1)

<sup>9</sup> 24 CFR § 35.1345(a)(2)

<sup>10</sup> 24 CFR § 966.4(f)(5)

<sup>11</sup> 24 CFR § 8.20; 24 CFR § 8.24(b); Notice PIH 2011-31

Reasonable accommodation transfers are often tenant-initiated. PHAs must not force a family to transfer to another unit because a member of the family has a disability.<sup>12</sup>

## 2.5 Occupancy Standards

Occupancy standards relate to the appropriate size and type of unit based on household composition. PHAs must ensure that the size and type of unit in which the household is living is appropriate for the household's size and needs. When household composition changes, PHAs must put the respective household on the transfer list and move them when a unit becomes available, if they are not in an appropriately sized unit.<sup>13</sup>

If a household reports, or the PHA becomes aware of a change in household composition, then the PHA will determine whether the unit is still appropriately sized. For example:

- A household may be considered over-housed for a unit when an adult child leaves the household; or
- A household may become under-housed for a unit when a new child or an adult joins the household.

All public housing leases must include a clause wherein the tenant agrees to transfer to an appropriate size unit based on household composition, upon appropriate notice by the PHA that such a unit is available.<sup>14</sup>

### Practice Tip: Establishing Occupancy Standards Transfers in the ACOP

HUD encourages PHAs to establish criteria in the ACOP that indicates:

- When the PHA requires a family to transfer to a more appropriately sized unit because of a change in family composition; and
- When the PHA will leave it up to the tenant to initiate a transfer request.

When determining these policies, HUD strongly encourages PHAs to assure compliance with all state or local laws regarding occupancy standards (e.g., a local law allowing a maximum of two persons per sleeping space) and to consider the waiting list demand for unit sizes.

### 2.5.1 Split Family Transfers

PHAs have the option to allow very large families with two adult members to split into two separate households and transfer to two units. A PHA might offer a split family transfer if, for example, the family composition changed and now requires a seven-bedroom unit, but the PHA only has four-bedroom units available. A split family transfer is a type of occupancy standards transfer.

<sup>12</sup> 24 CFR § 100.65

<sup>13</sup> 24 CFR § 966.4(c)(3); 24 CFR § 960.257(a)(4)

<sup>14</sup> 24 CFR § 966.4(c)(3); 24 CFR § 960.257(a)(4)

If the PHA opts to grant this type of transfer, the ACOP would describe the requirements necessary for families to qualify. Below are examples of ACOP requirements, which will vary based on PHA policies and local needs:

- The persons who would be the original and new family head of household (HOH) must both be listed on the most recent lease. (This prohibits individuals from extending their “visits” to the family to obtain a unit);
- The family must be overcrowded according to the PHA’s occupancy standards; and
- The reason for the family split must be the addition of children through birth, adoption, or court-awarded custody.

## 2.5.2 Household Composition Changes

Families are required to request PHA approval before adding any family member as an occupant of the unit, other than those entering the family by birth, adoption, or court-awarded custody.<sup>15</sup> Failure on the part of the family to comply with the household composition provisions is a violation of the lease terms, for which a PHA may terminate the lease.<sup>16</sup>

HUD recommends that PHAs have a reasonably prompt process for determining whether or not the occupancy of additional household members should or should not be allowed. PHAs may establish specific reasonable policies for foster children and live-in aides and policies to determine whether to allow additional members.<sup>17</sup> The lease may also establish circumstances under which families are allowed to temporarily house proposed members of the household while requests are pending.

As always, when making a determination, PHAs must comply with civil rights laws and cannot discriminate based on a protected status, i.e., familial status or national origin. This prohibition is covered by major, relevant civil rights laws including 42 U.S.C. § 3601, 24 C.F.R. § 100 et seq, Title VI of the Civil Rights Act of 1964, 24 C.F.R. § 1 etc. PHAs also must not deny a request solely because the proposed household member has been a victim of domestic violence, dating violence, or stalking.<sup>18</sup> Families have the right to a grievance hearing if a request for additional household members is denied.<sup>19</sup>

Examples of reasonable policies to determine whether to allow additional household members may include a process to evaluate whether the new member:

- Passes the PHA’s screening criteria;
- Contributes to family reunification (i.e., the return of an incarcerated parent);
- Makes transfer to a larger sized unit necessary, and whether such units are available;<sup>20</sup> and/or
- Satisfies a tenant’s reasonable accommodation request (e.g., the additional household member is a live-in aide for a disabled family member).<sup>21</sup>

<sup>15</sup> 24 CFR § 966.4(a)(1)(v)

<sup>16</sup> 24 CFR § 966.4(l)(2)(i)(B)

<sup>17</sup> 24 CFR § 966.4(d)(3)(i)

<sup>18</sup> 24 CFR § 5.2005(b)

<sup>19</sup> 24 CFR §§ 966.51(a)(1), 966.53(a)

<sup>20</sup> 24 CFR § 966.4(d)(3)(i)(A)

<sup>21</sup> 24 CFR § 966.4(d)(3)(i)(B)

## 2.6 Incentive

Some PHAs have a practice of offering incentive transfers which give PHAs the option to transfer families to new or rehabilitated units. This type of transfer is voluntary on the part of the family. HUD encourages PHAs that offer such transfers to establish clear, fair, and objective criteria in their ACOPs and make the criteria well-known to families and staff.

## 2.7 Tenant-Initiated

Families may request a unit transfer that is not out of necessity. Such requests might include transfers to be closer to relatives, certain neighborhoods, employment, or a child's school. HUD encourages PHAs to establish policies on whether and under what circumstances it will consider a tenant-initiated request.

## 2.8 Transfers under the Violence Against Women Act (VAWA)

In accordance with VAWA, tenants who are victims of domestic violence, dating violence, sexual assault or stalking can request an emergency transfer from the tenant's current unit to another unit. HUD requires PHAs to adopt an Emergency Transfer Plan (ETP), based on HUD's model ETP (form HUD-5381) and incorporates strict confidentiality measures.<sup>22</sup>

The PHA's ETP must allow tenants to make an internal emergency transfer under VAWA when a safe unit is immediately available; a victim determines whether the unit is safe.<sup>23</sup> The plan must also describe policies for assisting tenants when a safe unit is not immediately available. Those policies must ensure that requests for internal emergency transfers under VAWA receive, at a minimum, any applicable additional priority that housing providers may already provide to other types of emergency transfer requests.<sup>24</sup> The ETP also must describe reasonable efforts the PHA will take to assist a tenant who wishes to make an external emergency transfer when a safe unit is not immediately available.<sup>25</sup>

A PHA may request in writing that the victim provide documentation of an occurrence of domestic violence, dating violence, sexual assault, or stalking in accordance with the regulation at 24 CFR § 5.2007. However, no other documentation may be required to qualify the tenant for an emergency transfer.<sup>26</sup>

VAWA does not impact a PHA's authority to establish and define other transfer policies; it only requires that specific policies be established for transfers under VAWA. Please see Notice PIH 2017-08 for additional detailed guidance on VAWA emergency transfer requirements.

# 3 Priorities Among Types of Transfers

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Transfers are prioritized according to standards established by the lease and the PHA's ACOP. Emergency transfers due to physical hazards are of the highest priority because of their immediate

<sup>22</sup> 24 CFR § 5.2005(e); 24 CFR § 5.2005(e)(4)

<sup>23</sup> 24 CFR § 5.2005(e)(1); 24 CFR § 5.2005(e)(5)

<sup>24</sup> 24 CFR § 5.2005(e)(6)

<sup>25</sup> 24 CFR § 5.2005(e)(7)

<sup>26</sup> 24 CFR § 5.2007(b)(1)



nature and the fact that PHAs could potentially be in violation of its responsibilities under the lease for failure to correct such hazards. Many PHAs establish multiple categories for transfers to make priorities clear and manageable. The following list is an example of how transfers could be prioritized:

1. Emergency due to physical hazards;
2. Emergency due to other causes;
3. Demolition, disposition, revitalization, or rehabilitation;
4. Reasonable accommodation;
5. VAWA emergency transfer;
6. Occupancy standards;
7. Split family;
8. Incentive;
9. Tenant-initiated.

### 3.1 When Transfers Take Precedence Over Waiting List Admissions

Generally, the types of transfers that take precedence over waiting list admission may include, but are not limited to:

- Emergencies;
- Reasonable accommodations;
- Demolition, disposition, revitalization, and rehabilitation;
- Incentive; and
- Occupancy standards transfers.

However, this list will vary by local needs. HUD strongly encourages PHAs to include which transfers take priority over waiting list admissions in the ACOP.

### 3.2 Mandatory and Optional Transfers

Tenants **must** comply with the following transfers:

- Emergencies due to physical hazards;
- Demolition, disposition, revitalization, and rehabilitation;
- PHA-initiated occupancy standard transfers defined as mandatory in the ACOP (e.g., the family is under-housed or over-housed and there is a waiting list for that particular unit size); and
- Other PHA-initiated transfers defined as mandatory in the ACOP.<sup>27</sup>

However, tenants may choose to request and/or accept transfers for other circumstances including, but not limited to:

- Reasonable accommodations;<sup>28</sup>

<sup>27</sup> 24 CFR § 966.4(h); 24 CFR § 970.21(a); 24 CFR § 966.4(c)(3); 24 CFR § 960.257(a)(4)

<sup>28</sup> 24 CFR § 100.65

- Emergencies due to other causes;
- Incentive;
- Occupancy standards that are not defined as mandatory by the ACOP;
- VAWA emergencies;<sup>29</sup>
- A split family; and
- Tenant-initiated requests.

HUD encourages PHAs to include in the lease, either directly or by reference, the list of mandatory and optional transfers. Tenants who wish to dispute mandatory transfers are expressly permitted to utilize the PHA's grievance procedure to resolve such disputes.<sup>30</sup>

HUD also recommends that the PHA's ACOP describe the number of unit offers it will provide to a tenant during the transfer process. Tenants are entitled to reject transfer offers for "good cause" reasons listed in the ACOP.

## 4 Eligibility for Transfers

PHAs are permitted to establish eligibility requirements for optional transfers. However, as detailed in the preceding sections PHAs must not establish such eligibility requirements for mandatory transfers involving emergency situations, reasonable accommodations, VAWA emergencies, and demolition, disposition, revitalization, or rehabilitation.<sup>31</sup>

Some PHAs require the following eligibility criteria for optional transfers:

- Tenants/household members have not engaged in criminal activity threatening the health and safety of residents and staff;
- Tenant does not owe any back rent or other charges, or does not have a pattern of late payments;
- Tenant does not have any outstanding housekeeping lease violations or history of damaging property; and
- Tenant has the ability to get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities).

## 5 Cost of Transfers

There are certain circumstances in which PHAs must bear the reasonable costs of transfers.

PHAs must pay the reasonable costs of transfers that are:<sup>32</sup>

- Initiated by the PHA for demolition, disposition, revitalization, or rehabilitation purposes;

<sup>29</sup> 24 CFR § 5.2005(e)(2)

<sup>30</sup> 24 CFR § 966.54; 24 CFR § 966.55

<sup>31</sup> See 24 CFR § 966.4(h)(3); 24 CFR § 100.65; 24 CFR § 5.2005(e)(2); 42 U.S.C. § 1437p(4)(A)(iii); 24 CFR § 970.21(a)

<sup>32</sup> 24 CFR § 8.24(b)

- Required due to conditions that pose a physical hazard (i.e., building system failure, or other emergency conditions that cannot be repaired within 24 hours); and/or
- Required as a reasonable accommodation for families with disabilities.

Tenants typically bear the costs associated with occupancy standards transfers, although some PHAs may choose to pay the cost of moving families to smaller units. The reasonable costs for transfers may include not only the cost of packing, moving, and unloading, but also the cost of disconnecting and reconnecting any existing resident-paid utility services (i.e., telephone and cable television).

## 6 Processing Transfers

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Small PHAs may be able to process transfers at individual development sites, but larger PHAs will typically need to maintain a central transfer waiting list to ensure that transfers are correctly prioritized and uniformly processed across all properties. Since some transfers have a higher priority than admissions, it is essential to coordinate across the PHA's occupancy functions. HUD strongly encourages PHAs to outline in detail the policies on processing transfers in the ACOP.

In situations involving a large number of transfers, like an emergency or demolition, disposition, rehabilitation, or revitalization, the families will likely need to be accommodated at multiple sites as sufficient vacant units may not be available at one property. Transfers of this magnitude are generally centralized and may be handled by a designated relocation office or specialist within the PHA or a third-party company.