



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

SPECIAL ATTENTION OF:

Regional Managers; Office of Public Housing
Directors; Program Center Coordinators;
Public Housing Agencies; Resident
Management Corporations

NOTICE PIH 2016-20 (HA)

Issued: November 29, 2016
Updated PRA: May 2, 2018
This notice remains in effect until
amended, superseded or rescinded

Subject: 2 CFR 200.311(c)(1) Disposition Instructions for the Public Housing Agency (PHA) Retention of Certain Public Housing Real Property (that is no longer used or was never used for public housing dwelling purposes) Free from Public Housing Use Restrictions.

- 1) Background. The Office of Management and Budget (OMB) published 2 CFR part 200 on December 26, 2013, and described the rule as a streamlining of the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The requirements in 2 CFR part 200 are applicable to types of Federal awards (e.g., grant agreements, cooperative agreements, cost-reimbursement contracts) that provide financial assistance for federally funded programs (e.g., public housing Operating Fund and Capital Fund) made by Federal agencies (e.g., HUD) to non-Federal entities (e.g., PHAs). Part 200 became effective for non-Federal entities on December 26, 2014 with one exception: 2 CFR 200.110(a) was revised to give a one-year grace period for implementation of the procurement standards.

HUD published its implementing regulation for 2 CFR part 200 in the joint, government-wide interim final rule issued by OMB in the Federal Register on December 19, 2014 at: <https://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-28697.pdf>. Also, HUD issued a Transition Notice at SD-2015-01 on February 26, 2015, to further clarify part 200 requirements for HUD programs and it explained that Subpart B of 2 CFR part 200 "makes clear that part 200 does not supersede any existing or future authority under law or by executive order or the Federal Acquisition Regulation (FAR). As an example, for public housing, the disposition statute at Section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p) (1937 Act) supersedes the disposition instructions in §200.311(c)." (see <https://www.hud.gov/sites/documents/15-01SDN.PDF>). HUD published conforming amendments to HUD regulations for part 200 on December 7, 2015. (see <https://www.gpo.gov/fdsys/pkg/FR-2015-12-07/pdf/2015-29692.pdf>) and a correction to the conforming amendments on December 24, 2015 (see <https://www.gpo.gov/fdsys/pkg/FR-2015-12-24/pdf/2015-32470.pdf>).

- 2) Purpose and Applicability. 2 CFR 200.311(c)(1) provides that when real property acquired or improved under a Federal award is no longer needed for the originally authorized purpose, non-Federal entities (e.g., PHAs) must obtain “disposition instructions” from the Federal awarding agency (e.g., HUD) that provide for the retention of title after compensating the Federal awarding agency. This notice serves as “disposition instructions” under 2 CFR 200.311(c)(1) and applies when a PHA proposes to retain ownership of certain public housing real property in order to use it for purposes outside of the public housing program.¹ The “disposition instructions” described in this notice include the conditions under which HUD will consider authorizing an exception to the requirement to compensate HUD for the retained public housing real property pursuant to 2 CFR 200.102(b). This notice only applies to public housing real property that is no longer or was never used for public housing dwelling purposes (see examples in section 4 below). This notice does not apply to public housing dwelling units that are currently under an Annual Contributions Contract (ACC) or are receiving assistance under Section 9 of the 1937 Act. HUD plans to issue a final rule which will further detail the regulatory changes to 24 CFR part 970 necessary to further implement the 2 CFR part 200 requirements.

Section 18 of the 1937 Act and 24 CFR part 970 continue to apply to the disposition of public housing real property.

3) Definitions.

- a) *1937 Act* means the U.S. Housing Act of 1937 (Pub. L. 93-383) (42 U.S.C. 1437 et. seq.), as amended.
- b) *Annual Contributions Contract (ACC)* means the written grant agreement between HUD and a PHA under which HUD agrees to provide funding for a public housing program under the 1937 Act and the PHA agrees to comply with HUD requirements for the public housing program.
- c) *Declaration of Trust (DOT) /Declaration of Restrictive Covenants (DORC)* (see 24 CFR 905.108 and 24 CFR 905.304) The DOT is a legal instrument that grants HUD an interest in public housing real property. It provides public notice that the property must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD. The DORC is a legal instrument that ensures that PHAs and Owner Entities develop mixed-finance projects in compliance with Public Housing Requirements. The DORC restricts disposition of the property, including transfers, conveyances, assignments, leases, mortgages, pledges, and other property encumbrances.

¹ This notice does not address 2 CFR 200.311(c)(2) or 2 CFR 200.311(c)(3). 2 CFR 200.311(c)(2) provides that non-Federal entities may sell property and compensate the Federal awarding agency. This section does not apply to public housing real property and is not being implemented by this notice because Section 18 of the 1937 Act and 24 CFR part 970 govern the sale of public housing real property. 2 CFR 200.311(c)(3) provides that non-Federal entities may transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. This section is not being implemented by this notice.

- d) *Public housing real property* means real property that was acquired, constructed, maintained, or operated with public housing Operating or Capital Funds under Section 9 of the 1937 Act or prior HUD development and modernization programs for public housing.²
 - e) *Real property* means land, including land improvements, fixtures, structures and appurtenances thereto, but excludes moveable machinery and equipment.
 - f) *Rental Assistance Demonstration (RAD) program* means the Consolidated and Further Continuing Appropriations Act of 2012 (Pub. L No. 112-55), as amended. RAD allows projects funded under the public housing program to convert their assistance to long-term, project-based Section 8 rental assistance contracts.
 - g) *Retention* means a PHA's ownership of public housing real property released from Federal use restrictions (i.e., released from the terms of the ACC and applicable DOT/DORC). It is the continued possession of property that was used for public housing purposes prior to the release of the use restrictions.
 - h) *Retention Application* means the documentation submitted by a PHA in support of a 2 CFR 200.311(c)(1) retention request. The application consists of HUD-52860 and HUD-52860 Addendum G. See Sections 7 and 8 below for more details on the content and form of the Retention Application.
- 4) Examples of Eligible Property. Examples of public housing real property that are eligible for retention under this notice include, but are not limited to:
- a. administrative buildings, central warehouses, garages, community buildings or other non-dwelling structures that the PHA no longer needs to support its public housing units (e.g., because it has removed all or the majority of its public housing units through RAD or Section 18 demolition/disposition);
 - b. vacant land that formerly comprised public housing units that have been demolished with HUD approval under HOPE VI, Choice Neighborhoods grants, or Section 18 demolition under the 1937 Act;
 - c. "excess" vacant land that was acquired by the PHA with public housing funds from the 1937 Act, but was never developed with units operated as public housing;
 - d. "excess" vacant land that was not released from DOT/DORC as part of a RAD conversion (or other conversion or removal action); and
 - e. property that once comprised public housing dwelling units that were assisted under Section 9 of the 1937 Act and is now vacant and no longer receiving the benefit of any Section 9 assistance because the assistance at the property was converted to Section 8 assistance through RAD Transfer of Assistance authority.

² Other HUD guidance requires PHAs to assure that all of their public housing real property is uploaded in HUD's IMS/PIC system and has a valid DOT/DORC recorded against it. Notwithstanding this, if a PHA is not in compliance with these requirements and owns public housing real property that is not in IMS/PIC and/or does not have a valid DOT/DORC recorded against it, HUD requirements still apply to the use, retention, or disposition of that public housing real property. The PHA must work with its local HUD Office of Public Housing to bring the property into compliance with all applicable IMS/PIC and DOT/DORC requirements.

- 5) Requirement to Compensate HUD before Retention. Retention requests under 2 CFR 200.311(c)(1) require a PHA to compensate HUD, except as provided in paragraph 6) below. The amount a PHA must pay to HUD is calculated by applying HUD's percentage of participation in the cost of the original purchase (and costs of any improvements, including subsequent modernization) of the public housing real property to the fair market value (FMV) of the project or other real property. Because generally public housing real property has been funded exclusively with public housing funds, the percentage of participation costs are generally 100% of the FMV of the public housing real property.

Two examples are as follows:

Example 1. In 1970, a PHA acquired a property (vacant land) for \$500,000 with 1937 Act public housing funds. The PHA developed a non-dwelling community building on the property with \$1,000,000 of 1937 Act public housing funds. A 2016 appraisal estimates the highest and best use fair market value (FMV) of the property as \$5,000,000. The federal percentage of participation in the cost = $1,500,000 / 1,500,000 = 100$ percent. Therefore, PHA must compensate HUD \$5,000,000 (100 percent x \$5,000,000).

Example 2. In 1970, a PHA acquired a property (vacant land) for \$500,000 with non-1937 Act funds. The PHA developed a non-dwelling community building on the property with \$1,000,000 of 1937 Act public housing funds. A 2016 appraisal estimates the highest and best use fair market value (FMV) of the property as \$5,000,000. The federal percentage of participation in the cost = $1,000,000 / 1,500,000 = 66.7$ percent. Therefore, PHA must compensate HUD \$6,666,666 (66.7 percent x \$5,000,000).

If a PHA needs to return funds to HUD, the following applies:

- i. If the amount to be repaid is \$2,500 or less, the PHA should send a check, made payable to HUD, to the following address:
U.S. Department of Housing and Urban Development
P.O. Box 277303
Atlanta, GA 30384-7303
 - ii. If the amount to be repaid is greater than \$2,500, the funds should be returned to HUD via wire transfer. A PHA's local Public Housing Field Office will provide wiring instructions upon request.
- 6) Exceptions to Compensation Requirement in Retentions. In accordance with 2 CFR 200.102(b), HUD may, on a case-by-case basis with good cause and in its discretion, grant a PHA an exception to the compensation requirement if requested by a PHA. HUD will only consider a PHA's request for an exception to the requirement to compensate HUD if the public housing real property proposed for retention will:
- a) include development of rental housing or homeownership units that will be operated as housing affordable to low-income families (e.g., families with incomes at or below 80% of area median income (AMI) with rents generally not to exceed 30% of 80% of

- AMI). These units may be operated with other federal and/or local government assistance, including low-income housing tax credits (LIHTC). The number of proposed units must be a quantity acceptable to HUD based on the size (acreage) of the site and other relevant factors; or
- b) allow for a non-dwelling use that primarily serves or supports the service of low-income families (e.g., community centers, playgrounds, job training facilities, and administrative buildings). These non-dwelling uses may serve the general public, but must include a preference, target, and/or be reserved for use by low-income families. HUD does not consider general public benefits (e.g., schools, libraries, fire stations, police stations and bridges) to be approvable non-dwelling uses that primarily serve low-income families.

If a PHA is requesting an exception to the compensation requirement and its plans include the demolition of existing structures (e.g. non-dwelling property or property that once comprised public housing dwelling units where the assistance was converted under RAD), as part of its Retention Application, the PHA must specifically indicate the demolition and describe how such demolition is part of its plan to use the property for one of the purposes described in (a) or (b) above.³

- 7) Requirements Related to the Operation of Public Housing Real Property until the DOT/DORC is Released. Until HUD releases the DOT/DORC against public housing real property in accordance with this notice (or through another authority), the PHA shall continue to meet all applicable ACC obligations and public housing regulatory requirements in maintaining the public housing real property. To the extent that the PHA generates revenue from the public housing real property while such property is under the DOT/DORC, the revenue is restricted as public housing program income consistent with 2 CFR 200.80 and 2 CFR 200.307.
- 8) Sufficiency of the Retention Application. HUD will not consider approving a Retention Application unless the application contains substantially all of the information required in this notice and in the HUD-52860 Addendum-G form, and HUD will return an incomplete application to the PHA. HUD will disapprove a Retention Application if the application is inconsistent with applicable HUD regulations, statutes, or HUD guidance. PHAs have an ongoing responsibility to inform HUD of any material changes to their applications after submission. If HUD deems the changes are substantial, HUD shall cease processing the Retention Application and provide the PHA with an opportunity to amend and re-submit the application after complying with all applicable requirements for new applications (including board resolution and consultation). During HUD's review of a Retention Application, PHAs are required to revise or correct any certifications and

³ In this case, the demolition will occur after HUD approves the retention request and releases the DOT/DORC. Such a demolition will not be subject to HUD review or approval under Section 18 of the 1937 Act and 24 CFR 970.15 and no public housing funds can be used to pay for the demolition. However, if a PHA proposes to demolish structures before HUD releases the DOT/DORC on the public housing real property, the PHA must comply with the applicable demolition requirements of Section 18 and 24 CFR 970.15 (e.g., if a PHA wants to demolish structures with Capital Funds while the public housing real property is under DOT/DORC and then retain the vacant land in accordance with this notice).

other supporting documentation that are no longer valid or in compliance with requirements of this notice.

- 9) Use Restriction Requirements if HUD grants Exception to Retention Compensation Requirement. As a condition of HUD's granting an exception to the requirement to compensate the federal government in accordance with this notice and HUD's release of the DOT/DORC on the public housing real property, on a case-by-case basis, HUD may require that the PHA execute a use restriction or other arrangement of public record, in a form acceptable to HUD, that will ensure to HUD's satisfaction that the public housing real property will be retained by the PHA and used for the HUD-approved use. HUD generally will require a use restriction period of not less than 30 years unless there are compelling reasons for HUD to grant a shorter use restriction period. HUD may consider the amount of time the public housing real property would be required to be under DOT/DORC, the estimated FMV of the public housing real property, and/or the proposed future use of the public housing real property in considering requests to a use restriction period less than 30 years. HUD will generally require the use restriction to be recorded in a first priority position against the public housing real property and to survive foreclosure of any mortgages or other liens on the property. HUD will generally require that the use agreement stipulate that if the intended use is not accomplished (e.g. affordable housing units not developed) within a reasonable time or if the use restrictions are violated during the 30-year use restriction period, the PHA must compensate HUD for the full amount required under 2 CFR 200.311(c)(1) and HUD may exercise any remedies available to it, including those provided under 2 CFR 200.338.
- 10) Form of the Retention Application. PHAs must submit Retention Applications for the retention of public housing real property as described in this notice by submitting a HUD-52860 and HUD-52860 Addendum-G form electronically to HUD via the Inventory Removals Submodule of the Inventory Management System/PIH Information Center (IMS/PIC). HUD's Special Applications Center (SAC) will process the Retention Application. The following supporting documentation must be included in the Retention Application:
- a. A certification that the PHA has specifically authorized the retention action in its PHA Plan⁴. The description of retention action in the PHA Plan must be substantially identical to that in the Retention Application. HUD will not approve an application under this subpart unless the PHA has certified that it has complied with these PHA Plan requirements, including all civil rights provisions, and HUD has approved the PHA Plan. For Qualified PHAs under the Housing and Economic Recovery Act of 2008 (HERA), the PHA must describe the proposed retention at its required annual public hearing (or a second public hearing if it submits a Retention Application between its annual public hearings);

⁴ Note that the current PHA Plan template does not specifically include retentions under 2 CFR part 200 as a new activity that PHAs must describe. Notwithstanding this, PHAs must describe retention actions in their PHA Plans.

- b. A description of all public housing real property proposed for retention (including buildings, land, and physical address), along with a legal description of such property;
- c. A copy of the DOT/DORC that is recorded against the public housing real property proposed for retention;
- d. A statement describing why the public housing real property is no longer needed for public housing purposes;
- e. A copy of a resolution by the PHA's Board of Commissioners approving the proposed retention;
- f. A signed and dated letter in support of the application from the chief executive officer of the unit of local government;
- g. A statement describing how the PHA consulted with any residents and resident groups who will be impacted by the proposed retention in a way that provides actual and meaningful opportunity for resident input. PHAs must consult any residents who live in units on the site contiguous to the public housing real property proposed for retention; any resident organizations for the project that the public housing real property comprises; any PHA-wide resident organizations that will be affected by the retention (e.g. resident council); and the Resident Advisory Board (RAB). Consultation must be in the form of written communication describing the retention action and copies of the draft application to HUD must be made available to the residents and resident groups. In addition, PHAs are encouraged to conduct in person meetings where feasible. As part of the consultation, PHAs must inform residents and resident groups that they have the right to submit written comments to the PHA and that the PHA will submit copies of those written comments, along with its evaluation, to HUD as part of the application. PHAs must then submit those comments and evaluations to HUD as part of the application.⁵
- h. An estimate of the FMV of the public housing real property proposed for retention, as established on the basis of at least one appraisal of the highest and best use value of the project (i.e. without public housing ACC and DOT/DORC

⁵ PHAs must consult residents (including communications and materials) in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act of 1973 (24 CFR 8.6) and with 49 CFR 24.5, and as applicable, the Americans with Disabilities Act. This includes ensuring that, unless such actions would result in undue financial and administrative burdens or fundamental alterations, notices and resident meetings are provided in appropriate alternative formats as needed, e.g., Braille, audio, large type, accessible electronic communications, assistive listening devices, and sign language interpreters. Even in cases where actions may result in undue financial and administrative burdens or fundamental alterations, appropriate auxiliary aids and services to ensure effective communication must still be provided that would not result in such burdens or alterations. In selecting locations for consultation with residents, the PHA shall 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 (including, for example, TV rooms or informal gathering places), even if to do so may require multiple sessions with smaller groups of residents. PHAs must also 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 (LEP). This includes oral and written communications in connection with resident consultations required by this notice. Such language assistance may include, but is not limited to, providing written translation of notices regarding the plans for the project and oral interpretation at meetings. Otherwise, LEP persons may be denied participation in, and the benefit of, the PHA's program or activity.

use restrictions). Such appraisal must be performed by an independent appraiser. The appraisal must generally be completed within 6 months of the date an application is submitted to HUD. An exception would be if the PHA has an older appraisal (generally not older than 2 years) or other means of valuation approved by HUD. An estimate of HUD's percentage of participation in the cost of the original purchase (plus costs of any improvements, including subsequent modernization) if it is different from the estimate of the FMV. HUD's percentage of participation cost is almost always the same as the estimate of FMV of the public housing real property, unless it can be demonstrated with evidentiary documents that the public housing real property was acquired or modernized, in part, with non-public housing funds (e.g. funds not authorized under the 1937 Act, not appropriated for public housing, not public housing program income and not funds provided by HUD for this public housing real property);

- i. A notice of intent that sets forth whether the PHA is planning on compensating HUD for its percentage of participation in the cost of the original purchase, or if the PHA is requesting an exception to the compensation requirement. In cases where the PHA is requesting an exception, a statement of the proposed future use of the public housing real property that complies with this notice;
 - j. A certification that an environmental review for the proposed retention, including the proposed reuse (if known), was completed in accordance with 24 CFR part 50 or 58;
 - k. A certification that the PHA will comply with all applicable civil rights requirements related to this retention;
 - l. A certification that the PHA will comply with the terms and conditions of any HUD approval of the Retention Application including requirements applicable to future use (including required use restrictions), record-keeping, and reporting; and specifically that the PHA will retain records of the application and its implementing actions of HUD's approval of the application for a period of 3 years following the last required action of HUD's approval (e.g. compensating HUD or the expiration of the use restriction period) and will make such records available for inspection by HUD, the General Accountability Office and the HUD Office of Inspector General; and
 - m. Any additional information requested by and determined to be necessary for HUD to support the Retention Application and assist HUD in making a determination to approve or disapprove the application under this notice.
- 11) Removing Property from ACC, IMS/PIC, and DOT/DORC. PHAs must follow the applicable removal requirements outlined in PIH Notice 2010-44, as indefinitely extended by PIH Notice 2011-61, or any subsequent guidance that HUD issues on the requirements for removing public housing real property from ACC, IMS/PIC, and DOT/DORC based on an approval from HUD-Headquarters. HUD will approve the removal of the units from ACC, IMS/PIC, and DOT/DORC after it determines that the PHA has met all applicable requirements (including any use restriction requirements) of a HUD approval in accordance with this notice. Until such time that the public housing real property approved for retention is in "removed from inventory" status in IMS/PIC,

all applicable public housing requirements (including inspection requirements) continue to apply.

12) Distinction from Section 18 Disposition. The following chart outlines the primary distinctions between a disposition under Section 18 of the 1937 Act and a retention under this notice. This chart is for summary purposes only and does not supersede any applicable law, regulation, or guidance (provided herein or elsewhere).

Removal Tool	PHA Transaction	Treatment of Proceeds	Exceptions to Compensation	PHA Application to HUD
Part 200.311(c)(1) Retention	N/A. PHA retains title and continues to be legal owner of real property.	PHA will never realize proceeds. PHA is generally required to compensate HUD for HUD's percentage of participation in the cost of the original purchase (and costs of any improvements, including subsequent modernization) of the public housing real property applied to the fair market value (FMV). HUD's percentage of participation is generally 100%.	PHA may request a case-by-case exception from the requirement to compensate HUD in 2 CFR 200.311(c)(1). Future use generally needs to include housing units for low-income families, or a non-dwelling use that serves low-income families. A 30-year use agreement is generally required.	HUD-52860 and HUD-52860-G, via PIC (application submissions substantially same as Section 18). SAC reviews in accordance with this notice.
Section 18 Disposition	PHA sells, transfers, or ground leases real property interest to a separate entity.	PHA may realize proceeds from transaction. PHA may retain and use proceeds, with HUD approval, for eligible uses under disposition laws and HUD guidance.	PHA may request to dispose property at below FMV based on a commensurate public benefit under 24 CFR 970.19. Future use generally needs to include low-income units, housing units for low-income families, or a non-dwelling use that serves low-income families (depending on if the property being disposed of comprises public housing units or non-dwelling property). A 30-year use agreement generally required.	HUD-52860, via PIC. SAC reviews in accordance with 24 CFR part 970 and PIH Notice 2012-7 (or successor notice).

- 13) 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) as form HUD-52860-G (Addendum G of form HUD-52860, Inventory Removal Application). The OMB control number is 2577-0075.
- 14) Technical Assistance. PHAs may request technical assistance from HUD on the requirements of this notice by emailing SACTA@hud.gov or by contacting their local Office of Public Housing.

_____/s/_____
Lourdes Castro Ramírez
Principal Deputy Assistant Secretary
for Public and Indian Housing