Section 18 Demolition & Disposition

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Section 18 Background

• Section 18 of the U.S. Housing Act of 1937 (as amended in 1998) removes the 1 for 1 public housing replacement requirement and provides broad authority to Public Housing Agencies (PHAs) to demolish or dispose of public housing
  – Section 18 is commonly referred to as "demo/dispo"

• PIH Notice 2012-7 emphasized that HUD would generally only approve demolition or disposition applications if units were physically obsolete

• PIH Notice 2018-4 expands PHAs’ ability to use Section 18 to demolish or dispose of public housing to help PHAs reposition public housing to a more sustainable financial platform and access private capital

• Reviews and approvals by the Special Applications Center (SAC)
What happens under Section 18?

- Public housing units removed from the Annual Contributions Contract (ACC) and the PIH Information Center (PIC)
- Tenant Protection Vouchers (TPVs) are issued to families
- Asset Repositioning Fee (phase-out Operating Fund)
- Demolition Disposition Transition Funds (Capital Fund)
- Faircloth Adjustment (develop new public housing)
- For disposition only:
  - Declaration of Trust (DOT) released
  - PHA control over Future Use of Real Property
  - PHA control over Use of Proceeds, provided they are used for low-income housing (Section 8 or public housing)
PHA Objectives

PHAs can use Section 18 Disposition to:

• Preserve the asset through repositioning
  – Rehabilitate with other financing (e.g., tax credits)
  – Project based TPVs at site (as Project-Based Vouchers)

• Dispose of the asset in open market
  – Asset beyond repair or in undesirable location
  – Generate proceeds to develop other low-income housing
  – Provide residents with TPVs (tenant-based assistance)
  – Other objectives: Exit public housing program
SAC Application Requirements

• HUD-52860: Inventory Removal Application Form
• Justification
• Environmental Review
• PHA Plan
• Resident Consultation
• Local Government Consultation
• Board Resolution
• Method of Disposition
  – Public Bid or Negotiated Sale?
  – Commensurate public benefit
  – Amount and use of proceeds
• Estimate of fair market value (FMV)
• Tenant relocation information
• PIC submission (SAC will process)
Tenant Protection Voucher (TPVs)

- PHAs are eligible to receive replacement TPVs for units occupied within previous 24 months of SAC approval, with one limited exception
  - Public Housing-only PHAs partner with PHAs with voucher programs
  - TPV availability subject to Appropriations
  - HUD may establish priority order for TPVs, if needed
Justifications

Demolition:
• Obsolescence: Physical, location or other factors
• De Minimis

Disposition:
• Physical obsolescence
• Health and safety
• Infeasible operation
• Scattered site
• Non-dwelling property
• RAD & Section 18 repositioning
• More efficient/effective repositioning
• 50 units or less total inventory
Obsolescence

Physical Condition

- **Scope of Work: Rehab Needs**
  - Captures Immediate Needs (Repairs/replacements needed in 3 years or less)
  - Third-party report (structural, environmental)
  - International Building Code (IBC)

- **Cost-estimates**
  - R.S. Means Cost-Index
  - Total Development Cost (TDC) estimates published annually
  - 57.14% of TDC non-elevator buildings or 62.5% for elevator buildings

Location

- **Area poses serious health or safety risks to residents**
  - Examples: flooding, contaminated soils, noise, air quality, Superfund site
  - PHA cannot cure/mitigate cost-effectively

- **Third-party documentation (environmental review)**

- **PHAs generally sell property at Fair Market Value (FMV)**
De Minimis Demolition

- 5-year period, lesser of 5 units or 5% of units (PHA-wide)
  - Space used for resident needs; or
  - Unit(s) beyond repair
- Obsolescence **not** required
- HUD approval **not** required
  - SAC Application required (PIC record keeping)
- Environmental review required
Disposition: Health or Safety

- Conditions in the area (density, industrial or commercial development) adversely affect the health or safety of the residents
- Serious obstacles in maintaining units as healthy or safe (3rd party documentation)
- PHA cannot cure or mitigate cost-effectively
- Generally sell property at Fair Market Value (FMV)
Disposition: Infeasible Operation

- No demand based on location: vacancy issues over an extended period of time
- Supportive documentation:
  - Census tract
  - No waiting list for BR-size of units
- Market analysis may be required
- Generally sell property at Fair Market Value (FMV)
- Efforts to mitigate (e.g., marketing incentives, etc.)
Disposition: Scattered-Site Units

• Buildings
  – Non-contiguous
  – 4 or fewer units

• Unsustainable to operate and/or maintain

• Must have Relocation Plan
  – Allow residents to remain (through PBV) or provide tenant-based voucher

• Flexibility in Structuring Disposition
  – Sell at FMV on open market (generate proceeds)
  – Partner with related entity and sell at below FMV so units can be used as affordable rental housing, including PBV
  – Create local homeownership program
Disposition: Non-Dwelling Property

- Exceeds needs of the project
- Incidental to, or does not interfere with, the continued operation of the remaining portion of the project

Examples: Central PHA office building, excess remaining from RAD deal or excess at current project
Disposition: Very Small PHA

• 50 or fewer Public Housing units
• Must close-out Public Housing program
  – Consolidation/transfer or ACC termination
• Flexibility in Structuring Disposition
  – Sell at FMV (generate proceeds)
  – Partner with related entity and sell at below FMV so units can be used as affordable rental housing, including PBV
• Must have Relocation Plan
  – Allow residents to remain (through PBV) or provide tenant-based voucher
• Find Voucher PHA to administer TPVs if Public Housing-only PHA
More Efficient/Effective Units

- Allows for disposition of units where on or off-site replacement units (public housing or Section 8) will be more efficient or effective
- PHA will only receive TPVs for 25% of occupied units
- No obsolescence test
- PHA determines number of replacement units

Example: Fully occupied 40-unit project located in undesirable area and in need of rehab but does not meet standard for Section 18 “obsolescence”

- PHA proposes to sell the land and use proceeds to build elsewhere
- PHA would be eligible for 10 TPVs (25%) if all units are occupied
- Along with 4% tax credits, PHA proposes to build a mixed-income 20-unit property: 10 would be Section 8 PBVs and 10 would be standard tax credit units
RAD-Section 18 Blend

- To encourage PHAs who are undertaking major repairs/construction under RAD, HUD will allow 25% of the total units at the project to receive Section 8 Tenant Protection Vouchers (TPVs) via Section 18, which the PHA can project-base.
- To qualify, project cannot be financed with 9% tax credits and construction costs must meet 60% of Housing Construction Cost (HCC) limits.
- PHA will make Section 18 application via RAD (simultaneous processing).

**Example: 100-unit project; HCC limits = $160,000/unit**

- Minimum construction costs = $96,000/unit
- RAD Units = 75
- Section 8 TPVs = 25
- Financing Type = 4% tax credits, bonds, or private financing.
Disposition to Whom?

• Separate legal entity under State law
  – PHA may retain ownership or control
  – May be non-profit of PHA

• Options:
  – Open market at FMV (Public Bid/Auction)
  – Negotiated Disposition at FMV (Identified Buyer)
  – Negotiated Disposition at below FMV (Identified Buyer)
    (commensurate public benefit)
  – Sale or Ground Lease
Commensurate Public Benefit

• Required for dispositions proposed below FMV
• HUD determines on a case-by-case basis
  – Property used as housing for low-income families
  – Property used as non-dwelling for low-income families (e.g., community center)
• Use restriction required
  – PHA can propose preferred form of use restriction
  – Generally 30-years
• Limitations/Restrictions: not for general public benefits (e.g., can not be transferred to City for a park)
Property Valuation

• Appraisal Required if property disposed at FMV
  – Dated within the year of application submission

• Tax Assessor Opinion or other alternative method of valuation
  if property disposed at below FMV based on commensurate
  public benefit (e.g., development of affordable housing)
Proceeds

• Eligible Uses:
  – Relocation and reasonable closing costs (gross proceeds)
  – Modernization/Development of Public Housing (Cap Fund)
  – Operation of Public Housing (Op Fund)
  – RAD costs
  – Modernization or development of PBV units
  – Section 8 Housing Assistance Payment (HAP) shortages (if confirmed by HUD)

• SAC approval required

• Deposit under HUD-51999 (General Depository Agreement)
Resident Consultation

• In addition to consulting residents on the PHA Plan, PHAs must consult:
  – Residents of development(s)
  – Group representing residents of the development(s)
  – Group representing all residents of the PHA
  – Resident Advisory Board (RAB)

• Residents can submit written comments and PHA must provide those comments to HUD in application
Relocation

• Governed by Section 18 and 24 CFR Part 970
• Not subject to Uniform Relocation Act (URA)
• Requirements:
  – Offer all residents comparable housing (Public Housing, S8 voucher, PBV)
  – 90-day notice to residents
  – Counseling/advising services
  – Pay actual and reasonable moving costs (e.g., security/utility deposits)
  – Compliance with fair housing (e.g., accessible units)
  – Cannot begin relocation (issue 90-day notice) until HUD approval
  – Cannot begin demolition or complete disposition until residents relocated
Comparable Housing Resources

• Public Housing units (off-site)
• Project-based Section 8 units (including existing units if project basing voucher units with the disposition)
• Tenant-based Section 8 vouchers (family must be under lease to complete relocation)

*PHA may be eligible to receive TPVs to provide the resources for this Section 8 assistance*
Public Housing-Only PHAs

• Eligible to apply under Section 18 demolition/disposition
• To provide TPVs to families, must find HCV PHA to administer TPVs
  • HCV PHA must have jurisdiction
  • Field Office can assist in finding HCV PHA
  • Field Office must approve administrating HCV PHA
Impact on Public Housing Funds

• PHA may spend Cap and Op Funds on units under ACC, including those proposed/approved for removal
• PHA may not spend Cap or Op Funds on units after they are removed from the ACC
  – Removed from Inventory (RMI) status in PIC
• Operating Fund phase down Asset-Repositioning Fee (ARF): Funding triggered based on start of relocation in PIC application
• Demolition Disposition Transition Funding (DDTF): Supplement of Capital Funds triggered when units in RMI status
• Special Applications Center (SAC) processes Section 18 applications

• Local HUD Public Housing Field Office
  – Provides technical assistance regarding application requirements
  – Confirms environmental review and PHA Plan Requirements
  – Assists SAC staff in reviewing Section 18 applications as needed

• Fair Housing and Equal Opportunity (FHEO) conducts Civil Rights Compliance Review (if application include units)
After HUD Approval

**PHA is responsible for:**
- Applying for Tenant Protection Vouchers
- Relocating residents
- Providing updates on relocation to FO (Op Fund accuracy)
- Requesting Field Office release of Declaration of Trust
- Preparing Use Agreement and/or Depositing Proceeds under GDA HUD-51999
- Requesting to remove the property from PIC within 7 days of demolition/disposition
- Complying with any other conditions of SAC approval
- Requesting amendments to the SAC for material changes

**Local Public Housing Field Office is responsible for:**
- Processing requests for TPVs (and facilitating partnerships for PH-only PHAs)
- Releasing DOT and approving Use Agreement (if applicable)
- Approving property for removal (RMI) status in PIC after demolition/disposition at PHA’s request
Public Housing Close-Out

• Required for Section 18 dispositions of 50 and under
• Optional for other Section 18 justifications, RAD, voluntary conversion, & other repositioning tools which result in removal of all public housing units
• Two close-out options:
  – Voluntary Transfer/Consolidation (PIH Notice 2014-24)
  – ACC Termination (PIH Notice 2019-13)
• PHA must inform HUD of close-out (or redevelopment) plan through HUD-5837 as part of SAC or RAD application that removes the last of PHA’s public housing units
Additional Resources

- Demolition or Disposition of Public Housing: [24 CFR Part 970](#)
- Latest Demolition & Disposition Notice: [PIH Notice 2018-04](#)
- Fiscal Year HCV Funding Provisions: [PIH Notice 2018-09](#)
- Inventory Removals Application: [HUD-52860](#)
- Demo Dispo Transition Funding (DDTF): [24 CFR 905.400](#)
- Asset Repositioning Fee (ARF): [PIH Notice 2017-22](#)
- Environmental Requirements: [PIH Notice 2016-22](#)
- Close-out Requirements: [PIH Notice 2019-13](#)
- Your local Public Housing Field Office
- Special Applications Center: [www.hud.gov/sac](http://www.hud.gov/sac)