

**Changes in Public Housing Demolition/Disposition Residential Relocation Requirements under Section 18 of the United States Housing Act of 1937 as amended by the Quality Housing Work Responsibility Act of 1998 (QHWRA)**

The URA is not applicable to the relocation of residents based on an approved application for demolition or disposition of public housing units under Section 18 of the United States Housing Act of 1937 (the 1937 Act) (with or without HUD financial assistance) after October 21, 1998 (the effective date for the Quality Housing and Work Responsibility Act (QHWRA) of 1998 (P.L. 105-276)). Section 18 includes relocation provisions for residents of covered projects that are similar to, but not identical to, the URA. (See chart)

Activities Covered by Section 18 Relocation Provisions

Generally, Section 18 of the 1937 Act governs Public Housing Agency (PHA) activities to demolish or dispose of part or all of a public housing project.<sup>1</sup> The relocation provisions of Section 18(a)(4) apply to:

- Any demolition or disposition of public housing unless specifically excepted out by statute (e.g., severely distressed public housing demolition pursuant to a revitalization plan (HOPE VI) under Section 24(g)).
- Consolidation of occupancy in public housing either within a building, among buildings, or between a public housing project and other housing under Section 18(e). The purpose of such consolidation must be to improve the living conditions of residents or to provide greater efficiency in serving the residents. See 42 U.S.C. 1437p(e).
- The so-called “*de minimis*” demolition exception from the statute’s requirements (see Section 18(f)). This provision allows a PHA to demolish the lesser of five units or five percent of the total number of dwelling units owned by the PHA in any five-year period, if the space occupied by the demolished unit or units is used for meeting the service or other needs of the residents or if the unit or units are beyond repair. The statute does not define what conditions constitute “beyond repair”.
- Demolition of public housing units using Capital Funds under Section 9(d)(F).

Activities Not Covered by Section 18 may be covered by URA Relocation Provisions

By its own terms, Section 18 does not apply to acquisition or rehabilitation activities undertaken by PHAs. The URA, therefore, would apply to any displacement resulting from PHA acquisition or rehabilitation of real property for a federally-assisted program or project.

Implementing regulations at 24 CFR Part 970.2(a)(1) thru (12) provide additional guidance on the activities and structures not covered by Section 18.<sup>2</sup> However, not all of these

---

<sup>1</sup> Public housing includes housing assisted under the 1937 Act, other than section 8. 24 CFR 5.100. This includes dwelling units that are owned by PHAs and that are subject to Annual Contributions Contracts (ACCs) under the 1937 Act; and dwelling units in a mixed finance project that are assisted by a PHA with capital or operating funds.

<sup>2</sup> Reference should also be made to PIH Notice 2005-32. This Notice updates Notice 99-19 to reflect changes to the requirements for demolition and disposition processing, as well as revisions made to the associated application form HUD-52860 in 2002. The purpose of the notice is as follows: (1) to clarify the applicability of Section 18 to a

activities are subject to the URA (which is limited to displacement caused by acquisition, rehabilitation, or demolition). Generally, section 970.2<sup>3</sup> identifies two types of situations:

- (1) Where the PHA may own or operate the structures/units but the activities do not fall under the governance of Section 18 – generally because the units are not public housing units under an ACC (e.g., section 8 housing) or the units are public housing projects but the demolition or disposition of which are excepted from Section 18 coverage by statute; and
- (2) activities that concern the demolition of, or removal of, PHA-owned units from public housing use, which would normally be considered demolition or disposition under Section 18 but as a regulatory matter are determined not subject to the requirements of Section 18.<sup>4</sup>

Activities and structures falling under the first situation which would trigger the relocation provisions of the URA include:

- Demolition (but not disposition) of severely distressed units as part of a revitalization plan under Section 24 of the Act, 42 U.S.C. 1437v (HOPE VI) approved after October 21, 1998;
- Demolition (but not disposition) of public housing developments removed from a PHA's inventory under Section 33 of the Act, 42 U.S.C. 1437z-5 (required conversion of distressed public housing to tenant-based assistance);
- Demolition of PHA-owned Section 8 housing, or housing leased under former Sections 10(c) or 23 of the U.S. Housing Act;
- Demolition of public housing converted pursuant to sections 22 of the 1937 Act.

Activities and structures falling under the second situation which would trigger the URA relocation provisions include:

- A whole or partial taking for a federally-assisted project, by a public or quasi-public entity (taking agency) authorized to take real property by its use of police power or exercise of its power of eminent domain under state law;
- Demolition after conveyance of a public housing project to a non-PHA entity in accordance with an approved homeownership program under Title III of the Cranston-Gonzalez National Affordable Housing Act (HOPE I), 42 U.S.C. 1437aaa note.

### **RELOCATION ASSISTANCE PROVIDED PURSUANT TO SECTION 18.**

Pursuant to section 18, a PHA must provide relocation assistance (e.g., the payment of actual and reasonable relocation expenses) to residential tenants. Generally, there is no assistance provided for the displacement of businesses (including non-profit organizations) occupying public housing property. However, where the business is part of a mixed finance

---

HOPE VI related demolition; (2) to inform PHAs of the changes to Section 18 by Section 531 of QHWRA; (3) to provide guidance on the criteria HUD will use to process demolition/disposition applications; and (4) to discuss the new certification required under QHWRA. It should be noted that HUD published a proposed rule on December 15, 2004 (69 FR 75188) entitled "Demolition or Disposition of Public Housing Projects." The rule proposed to implement revisions to Section 18 of the 1937 Act made by the QHWRA of 1988.

<sup>3</sup>The proposed rule (69 FR 75188) would codify this provision at 24 CFR §970.3.

<sup>4</sup>The proposed rule (69 FR 75188) would essentially separate these activities into two categories as described under §§ 970.3(b) and (c).

development and the property is not owned by the PHA, or the property is owned or leased by the PHA and the demolition or disposition activity is not otherwise subject to Section 18, any federally-assisted activity involving acquisition, rehabilitation, or demolition that results in the displacement of a business, non-profit organization or farm may be subject to URA requirements.

## **EXAMPLES**

1. A PHA proposes to dispose of public housing units for homeownership pursuant to section 32 of the 1937 Act. The PHA provides purchasing families with downpayment assistance from amounts it received under section 9(d) of 1937 Act (the “Capital Fund”). Tenant-occupants in non-public housing who are displaced by the purchasing families would be eligible for relocation assistance under the URA (an owner-occupant who is selling the property may not be). Section 32(e) also provides statutory relocation requirements specific to the homeownership program that must be followed for the public housing tenants who do not exercise the right of first refusal. *See* 24 CFR 906.23. Relocation Assistance under the URA and section 32 may overlap in many respects. For example, for a tenant displaced from a public housing unit, the provision of public housing, project-based assistance, or tenant-based assistance under section 32(e) would meet the requirements for a comparable replacement dwelling under the URA.
2. A PHA leases PHA-owned commercial space to a non-profit organization incident to its normal operation. The PHA subsequently decides to rehabilitate the structure using HUD financial assistance. The rehabilitation results in the business tenant’s displacement. By regulation (see 970.3(c))<sup>5</sup> the rehabilitation activity is not subject to Section 18 requirements. However, the activity may be subject to the URA.<sup>6</sup>
3. A PHA, using a HOPE VI Demolition-Only grant (as opposed to a Revitalization Grant) and Capital Funds, proposes to demolish severely distressed public housing units and PHA-owned Section 8 housing in the same project. The demolition of the public housing units is subject to Section 18, and thus the URA does not cover the resulting displacement of the public housing tenants. However, the demolition of the Section 8 units is not subject to Section 18 and, therefore, relocation of the Section 8 tenants is subject to the URA.
4. A PHA proposes to demolish public housing units pursuant to Section 18. The PHA proposes to receive CDBG or HOME funds from a city to carryout the demolition. Although the URA may not apply to public housing demolition, the use of CDBG or HOME funds for demolition will trigger the applicability of section 104(d) of the Housing and Community Development Act of 1974, as amended, (including the relocation provisions, the one for one replacement housing provisions) and the URA.

---

<sup>5</sup> See footnote 3.

<sup>6</sup> Note that generally the reference in section 970.3 to “[t]he leasing of dwelling or non-dwelling space incident to the normal operation of the project for public housing purposes, as permitted by the ACC” refers to the PHA’s leasing out of PHA-owned, public housing space (e.g., property under an ACC) for PHA operations. While the leasing of dwelling space under this provision may result in the displacement of public housing residents, the residential lease may generally allow transfers of residents to other units for such activities.

Relocation Assistance for Displaced Public Housing Tenants: URA vs. Section 18

	URA	Section 18
Moving & Related Expenses (PHA unit move to a PHA unit)	<p><b>PHA choice!</b></p> <ul style="list-style-type: none"> <li>• PHA move resident with force account staff or contractor (\$100 allowance to resident), <b>or</b> allow resident to choose:               <ul style="list-style-type: none"> <li>○ Payment for actual costs of a self-move, or</li> <li>○ Payment for self-move at DOT schedule amount or</li> <li>○ A combination of both.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Actual and reasonable relocation expenses</li> </ul>
Moving & Related Expenses (PHA unit move to non-public housing—with or without Voucher assistance)	<p><b>Resident’s choice!</b></p> <ul style="list-style-type: none"> <li>• Payment for actual costs of a Self-move, or</li> <li>• Payment for self-move at DOT schedule amount, or</li> <li>• A combination of both.</li> <li>• (Optional) PHA may offer to move resident with force account staff or contractor (\$100 allowance to resident)</li> </ul>	<ul style="list-style-type: none"> <li>• Actual and reasonable relocation expenses</li> </ul>
Replacement Housing	<ul style="list-style-type: none"> <li>• Offer comparable replacement dwelling which may be:               <ul style="list-style-type: none"> <li>○ Tenant based assistance (voucher)</li> <li>○ Project-based assistance</li> <li>○ Public housing unit</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Provide comparable housing which may be:               <ul style="list-style-type: none"> <li>○ Tenant based assistance (voucher)</li> <li>○ Project-based assistance</li> <li>○ Public housing unit</li> </ul> </li> </ul>
Replacement Housing Payment	<ul style="list-style-type: none"> <li>• Computed on 42-month period</li> <li>• Amount needed to reduce new rent/utility costs to the lower of old rent/utility costs or (for low income persons only, 30% of gross monthly income)</li> <li>• “Gap” payments may be necessary even between old PHA rent/utilities and new subsidized rent/utilities</li> </ul>	<ul style="list-style-type: none"> <li>• No Replacement Housing Payment</li> <li>• No provisions for “gap” payments</li> </ul>
Notices	<ul style="list-style-type: none"> <li>• General Information Notice (GIN)</li> <li>• Notice of Eligibility or Non-displacement at ION</li> <li>• 90 day notice to vacate</li> </ul>	<ul style="list-style-type: none"> <li>• 90 day notice to move</li> </ul>

	URA	Section 18
Services	<ul style="list-style-type: none"> <li>• Advisory services               <ul style="list-style-type: none"> <li>○ Determine resident needs and preferences</li> <li>○ Explain payments and assistance</li> <li>○ Current and continuing information on comparable housing</li> <li>○ Inspection of replacement housing</li> <li>○ Assistance filling out claim forms</li> <li>○ Mobility counseling</li> <li>○ Transportation to inspect replacement housing</li> <li>○ Advice on other assistance sources</li> <li>○ Information on federal and state housing programs</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Necessary counseling</li> <li>• Mobility counseling</li> </ul>