

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Public and Indian Housing

Special Attention of: NOTICE PIH 99-19 (HA)

Secretary's Representatives; Issued: 4/20/99
Senior Community Builders; Expires: 4/30/2000
HOPE VI Coordinators;
Public Housing Directors;
Public Housing Agencies

Cross References:
Notice PIH 98-49 (HA)

Subject: Demolition/Disposition Processing Requirements
Under the New Law

1. PURPOSE.

The purpose of this notice is as follows: (1) to clarify the applicability of Section 18 to a HOPE VI related demolition; (2) to inform public housing agencies (PHAs) of the changes to Section 18 of the United States Housing Act of 1937, as amended, by Section 531 of Public Housing Reform Act of 1998 (The Department uses the title "the Public Housing Reform Act of 1998" to refer to the public housing provisions of the Quality Housing and Work Responsibility Act (QHWRA) of 1998, (PL 105-276)), (3) to provide guidance on the criteria HUD will use to process demolition/disposition applications, including those pending at the Special Applications Center (SAC) at the time the new statute was signed; and (4) to transmit a copy of a format for the new certification required under the Public Housing Reform Act. The Public Housing Reform Act was signed on October 21, 1998.

2. HOPE VI DEMOLITION.

Under Section 535 of the Public Housing Reform Act, where a PHA plans to demolish severely distressed public housing units pursuant to an *approved* HOPE VI Revitalization Plan, the demolition is not required to meet the provisions of Section 18 of the Act or the corresponding regulations, 24 CFR Part 970. Therefore, a HOPE VI Grantee with an *approved* Revitalization Plan after October 21, 1998, (the date of enactment of the Public Housing Reform Act) does not have to submit a separate demolition application to the SAC for

approval. The Department's requirements for demolition as a part of an *approved* HOPE VI revitalization grant are defined in the Fiscal Year 1999 HOPE VI Notice of Funding Availability which was published in the Federal Register on February 26, 1999, at 64 FR 9729, III(c)(1)(a).

A HOPE VI Grantee with an *approved* Revitalization Plan is required to complete Sections 1, 2, 3 - Table 1, Section 4, and 5 of HUD Form 52860, OMB Approval No. 2577-0075(exp.7/31/2001). The Department will use this information to enter the demolition into HUD's data system and to track the date(s) of actual demolition for purposes of operating subsidy and formula characteristics for the Comprehensive Grant Program (CGP) and its successor, the Capital Fund. The Department will not use this information to determine whether a HOPE VI Grantee can demolish the units. Once the demolition is completed, the HOPE VI Grantee must report the actual date of demolition to the HUD FO or HUB.

Any demolition application related to a HOPE VI Demolition Only grant (as opposed to a Revitalization Grant) still requires the submission of a separate demolition application in accordance with Section 18 of the Act, for approval by HUD.

Finally, any proposed disposition¹ (i.e., land, dwelling units, or nondwelling facilities) in a HOPE VI *approved* Revitalization Plan is still subject to Section 18 and the corresponding regulation. Therefore, if applicable, a HOPE VI grantee must submit a separate disposition application, in accordance with Section 18 of the Act, to the SAC for approval of any proposed disposition activity.

3. INDIAN HOUSING AUTHORITIES.

This Notice does not apply to Indian housing authorities., Indian tribes or their tribally designated housing entities.

4. SUMMARY OF THE CHANGES TO SECTION 18 OF THE ACT.

The significant changes to the demolition and disposition requirements in the Public Housing Reform Act include the following:

¹ Any long term lease of more than one year is considered a disposition in accordance with 24 CFR Part 970.2 of the regulations. In the past, a large number of PHAs involved in HOPE VI revitalization and mixed finance transactions did not understand that they may be required to submit a separate disposition application in addition to the HOPE VI or mixed finance application.

- A PHA must certify that: (a) its demolition or disposition application meets the statutory criteria; (b) its demolition or disposition is authorized in the PHA Plan and is consistent with the Plan; (c) its plan for the relocation of residents meets the requirements of the statute; (d) its use of net proceeds of sale meets the statutory requirements; and (e) it has provided the resident offer to purchase in cases of disposition (no longer required for demolition).
- Authorizes the Secretary to waive the requirement for the application of proceeds for repayment of debt in cases where the PHA has debt that has not been or cannot be forgiven (e.g., bonded debt and Federal Financing Bank Notes (FFB)). A PHA may request this action as part of its demolition or disposition application;
- Permanently eliminates the requirement for one-for-one replacement of units demolished or disposed of;
- Eliminates the requirement to offer for sale property proposed for demolition only to the resident organization;
- Requires consultation with the appropriate government officials in developing the application;
- Eliminates the requirement that relocation for demolition or disposition in accordance with Section 18 be covered under the Uniform Relocation Act (URA)² although other relocation provisions apply; and
- Allows a PHA to demolish the lesser of 5 units or 5 percent of its inventory, in a five year period, without submitting an application to HUD for approval.

5. PROCESSING PENDING AND NEW APPLICATIONS.

Processing of demolition and disposition applications will be reviewed and processed in two groups until a final regulation on PHA Plans and a new demolition and disposition regulation (Part 970) are published.

² Demolition of severely distressed public housing units and the acquisition of replacement housing performed pursuant to an approved HOPE VI revitalization plan continues to be covered by the URA.

Applications in Group 1, are those applications received at the SAC on or before October 21, 1998, the date the Quality Housing and Work Responsibility Act (Public Housing Reform Act) of 1998 (PL 105-276) was signed into law. Applications in Group 2, are those applications received at the SAC after October 21, 1998.

A. Group 1 Applications:

Applications in Group 1 will generally be reviewed and approved in accordance with 24 CFR Part 970 which was in effect at the time of the application submission. However, if the SAC staff identifies deficiencies in a Group 1 application, the PHA has the option at the time HUD requests additional information to either: (a) correct the deficiencies in accordance with 24 CFR Part 970, or (b) withdraw its application and resubmit it at a later date based on the Department's guidance as identified in this Notice for implementing Section 531 of the Public Housing Reform Act of 1998.

B. Group 2 Applications:

PHA Plan Requirement - Under Section 531 of the Public Housing Reform Act, which amends Section 18(a)(3), in order for a demolition or disposition application to be approved after the effective date of the law, a PHA must have "specifically authorized the demolition or disposition in the public housing agency plan, and has certified that the actions contemplated in the public housing agency plan comply with this section;" On February 18, 1999, the Department published "Public Housing Agency Plans, Interim Rule", in the Federal Register at 64FR8170. In brief, the interim rule allows the submission of an Interim Plan for Demolition/Disposition before the submission of the first Annual Plan (64 FR 8177). The Interim Plan provisions require a description of the action to be taken relating to proposed demolition and/or disposition.

The interim regulation for the PHA Plan generally requires that a PHA submit a 5 Year Plan and an Annual Plan. Since the PHA Plan is a new requirement, the Department will allow a PHA to submit an Interim Plan for Demolition/Disposition before the submission of the first Annual PHA Plan. Thereafter, it is a part of the Annual PHA Plan requirement. The Interim Plan will allow PHAs to meet the new requirements of Section 531.

The interim plan must provide the required description of the action to be taken, include a certification of

consistency with the comprehensive housing affordability strategy (CHAS)/Consolidated Plan which includes the Analysis of Impediments to Fair Housing Choice (AI), confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted or seek a waiver on the grounds that organizations that adequately represent residents for this purpose were consulted.

A complete description of the interim plan is found in the "Public Housing Agency Plans; Interim Rule" on page 8177 of the Preamble. It is important to note that the Interim Rule does require a public hearing. The public hearing requirements are described in the Preamble on page 8178 and in 930.17 of the regulation on page 8184. In summary, a PHA that wants to submit an interim plan must first prepare the plan and then conduct a public hearing to obtain public comment. The public must be notified no later than 45 days prior to the hearing that the public meeting is to take place. The interim plan must be available for viewing by the public prior to the hearing. Since the requirements for a public hearing are statutory, they cannot be waived.

The Office of General Counsel recently determined that a previous public hearing that provided 45 days notice to the public and addressed the proposed demolition or disposition of the development or portion of the development could be used to meet this requirement. A PHA should confer with the SAC to determine if a previous public hearing meets the requirements.

The demolition or disposition application must be submitted to the SAC for review and approval. The PHA may submit the demolition/disposition application, along with the required certification of consistency with the PHA Plan, to the SAC at the same time or later. Nevertheless, the demolition/disposition application cannot be approved until the Field Office approves the interim PHA Plan.

C. Implementation of Four New Provisions - All Applications

The Department will implement four specific provisions of the Public Housing Reform Act for all pending applications, including applications in Group 1. These four new provisions were effective as of October 21, 1998, the date of enactment of the Public Housing Reform Act of 1998 as described in Initial Guidance; Notice in Federal Register. The four provisions are as follows:

- one-for-one replacement requirement is eliminated;

- PHAs requesting to demolish the lesser of 5 units or 5 percent of the units in the PHA's inventory in a 5 year period, where the vacant space will be used for meeting the service or other needs of the public housing residents or the unit to be demolished is beyond repair, may demolish such units without submitting an application and requesting HUD approval;
- waiver of the requirement for the application of proceeds for repayment of debt (modernization or development debt) in cases where the PHA has debt that has not been or cannot be forgiven (e.g., bonded or FFB notes funded developments); and
- elimination of the requirement to make an offer to sell the property proposed for demolition to the resident organization where the PHA is requesting to *demolish* property.

Applications	Submission Date to SAC	Review Criteria
Group 1	Received on/or before 10/21/98	24 CFR Part 970
Group 2	Received after 10/21/98	Guidance on Section 531 in this Notice
Group 1 & Group 2 Applications		<ul style="list-style-type: none"> • one-for-one replacement eliminated - §18(d) • de minimis exception - §18(f) • waiver of debt - §18(a)(5) • no offer of sale to resident organization for proposed demolition - §18(c)

6. NEW APPLICATION SUBMISSION REQUIREMENTS - GROUP 2.

A. Justification for Whole or Partial Demolition or Disposition:

1. The Department has prepared a certification form for demolition/disposition applications that is attached to this PIH Notice. The applicant shall complete the HUD certification and include it as part of its application. (The certification is found in Appendix 1.)

2. In addition to the certification, the applicant shall complete the identified portions of HUD FORM 52860 as follows: Section 1-5, Section 6(2)(3)(4)(5), Sections 7 and 8, and Section 9, which is to be completed for disposition applications only.

B. Appropriate Local Government Consultation:

- In addition to consultation with residents of the development, resident advisory boards and the PHA-wide resident organization, the statute requires consultation with the appropriate local government officials.
- The PHA must submit, with the application, a description of the process of consultation with the local government. Summarize the issues raised by the local government and the PHA's response to the general issues. The PHA shall include in the application a letter signed and dated from the chief executive officer of the unit of local government which demonstrates that the PHA has consulted with appropriate local government officials on the proposed demolition or disposition. The appropriate local government official, is the elected official or the legally designated official, who has the primary responsibility for the conduct of the entity's governmental affairs. Examples of the "chief executive officer of a unit of general local government" are: the elected mayor of a municipality, the elected county executive of the county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government. The PHA is not required under the law to have approval of the appropriate local government official.

C. Offer to Sell to the Resident Organization - **Disposition:**

- In the case of a proposed partial or total disposition of a project, the PHA is required under the statute to offer to sell the property (i.e., vacant land, community building or housing units), in appropriate circumstances. The exceptions to the offer of sale, for a disposition application, are defined in 24 CFR 970.13(a)(2)(v) and (vi). If a PHA has determined that it meets one of the exceptions identified in 24 CFR 970.13(a)(2)(v) and (vi), it must provide a justification in writing in the application of how it meets the exception.
- A PHA must make the offer of sale to any eligible resident organization, resident management corporation at the development or a nonprofit organization acting on behalf of the residents of the development which has expressed an interest in writing, in a timely manner, in purchasing the property for continued use as low-income housing.

The requirement that the resident organization purchase the property for "*continued use as low-income housing*" is a new condition of purchase that was added in the Public Housing Reform Act .

- The requirement for the resident offer no longer applies to PHAs proposing partial or total demolition of PHA property (i.e., a community building or housing units). This is a major change from the current regulation.
- Expression of Interest - The PHA must notify the existing eligible resident organization, eligible resident management corporation, or nonprofit organization acting on behalf of the residents of its intent to dispose of the property in writing and give the resident organization 30 days to express its interest in writing of the intent to purchase the property for use as low-income housing. The 30 day period begins on the date of notification by the PHA of the proposed sale of the property.
- Opportunity to Arrange Purchase - If a resident organization or other entity as previously identified, expresses a written interest in purchasing the property, no disposition (other than to the entity) can take place for 60 days beginning on the date of the receipt of the written response from the entity.
- The resident organization has 60 days to develop and submit a proposal to the PHA along with a firm financial commitment for financing the purchase of the property. For guidance on the content of the proposal, see 24 CFR Part 970.13(g), Contents of Proposal.
- For guidance on the PHA review of the resident organization's proposal and notification of acceptance or rejection of the proposal, see 24 CFR Part 970.13(e), PHA Review of Proposals.
- See Appendix 2 for a redraft of 970.13 to determine which provisions of the regulation about resident organization opportunity to purchase continue to be effective.

- PHAs should note that the statutory basis for 24 CFR 970.13(b) has been eliminated. Therefore, where no resident organization exists a PHA is no longer required to give the residents the opportunity to organize to form a resident organization.

D. Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA):

The statute eliminates the requirement for compliance with the URA for demolition or disposition activities under Section 18 of the USH Act. (N.B., Relocation related to the demolition of severely distressed public housing pursuant to a Revitalization Plan is still covered under the URA.) The attached certification (See Appendix 1) requires that a PHA comply with certain actions where demolition or disposition is proposed including: 90-day advance notice of move, provision of comparable housing which meets the HQS, payment of actual and reasonable relocation expenses for each resident to be displaced; provision of any necessary counseling to include Mobility Counseling, and assurance that the demolition or disposition will not begin until relocation is completed. Section 8 assistance is available from the Department to assist in the relocation of residents.

E. Replacement Units:

The statute eliminates the requirement for one-for-one replacement of units proposed for demolition or disposition for all applicants.

Replacement for public housing units demolished may be built on the same site or in the same neighborhood as the original location, if the number of replacement public housing units is significantly fewer than the number of units demolished.

F. Deconcentration:

The PHA must consider its deconcentration policy when preparing its Interim Plan for Demolition/Disposition. The PHA must have a relocation plan which assures that every displaced tenant receives a full range of housing choices and receives adequate counseling (which includes counseling that provides tenants their rights under the Fair Housing Act and Mobility Counseling) to fully explore these choices. If Section 8 tenant-based assistance is to be used, the PHA's efforts should be focused on the Section 8 Management Assessment Program (SEMAP) Housing Opportunities Factor.

G. Consolidation of Occupancy:

Nothing in section 18 may be construed to prevent a PHA from consolidating the occupancy within or among buildings in a development or among projects or with other housing in order to improve the living conditions or to provide more efficient services to the residents.

H. De Minimis Exception for Demolition:

A PHA may demolish units without submitting an application, when it is proposing to demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned by the PHA over a 5-year period, but only if the space is used for service or other needs of the public housing residents, or the demolished project or portion thereof is beyond repair.

A PHA using the de minimis exception is required to complete Sections 1, 2, 3 - Table 1, Section 4 and 5 of HUD Form 52860. The Department will use this information to enter the demolition into HUD's data system and to track the date(s) of actual demolition for purposes of operating subsidy and formula characteristics for the Comprehensive Grant Program (CGP). The Department will not use this information to determine whether a PHA can demolish the units. Once the demolition is completed, the PHA must report the actual date of demolition to the HUD FO or HUB.

I. 24 CFR Part 970 - Applicable Provisions For Group 2.

In addition to the new provisions for Group 2 PHAs identified in this Notice, the chart below identifies specific sections of the regulation that remain in effect until a new regulation is issued. All other provisions of the regulation are no longer in effect for Group 2 PHAs.

PROVISIONS OF 24 CFR PART 970 IN EFFECT	
24 CFR 970.1	Purpose
24 CFR 970.2	Applicability
24 CFR 970.3	Definitions
24 CFR 970.4(a)(b)(e)	General Requirements for HUD Approval
24 CFR 970.8(a),(b),(c)(e),(g),(k)(l),(m),(n),(p)	PHA Application for HUD Approval
24 CFR 970.9(a)	Method of Sale
24 CFR 970.10	Costs of Demolition & Relocation

24 CFR 970.12	Required & Permitted Actions Prior to Approval
24 CFR 970.13 (See Appendix 2)	Resident Organization Opportunity to Purchase
24 CFR 970.14 (a) and (b)	Reports & Records

7. HUD APPROVAL/DISAPPROVAL OF APPLICATIONS.

The Assistant Secretary for Public and Indian Housing shall disapprove of a demolition or disposition application if it is determined that any of the following conditions are present:

- A. any certification made by the PHA is clearly inconsistent with either information and data available to the Assistant Secretary or information requested by the Assistant Secretary; or
- B. the application was not developed in consultation with-
 - 1. residents of the development to be affected by the proposed demolition or disposition; and
 - 2. each resident advisory board and resident council, if any, of the development to be affected by the proposed demolition or disposition;
 - 3. the appropriate local government officials.

8. DEMOLITION/DISPOSITION APPLICATION CHECKLIST FOR GROUP 2.

Information Required	Brief Description	Submitted
HUD Form 52860 - (OMB Number 2577-0075)	Complete applicable sections of the Form and submit all attachments. See paragraph 6.A.2. Available on the HUD Web.	
Certification Form - §18(a)(See Appendix 1)	Attachment of this Notice. Complete with Executive Director signature and date.	
Local Government Consultation - §18(b)	Description, Letter of Support from the Chief Executive Officer	
Documentation of Offer to Sell to Resident Organization- Disposition Only - §18(c)		
De Minimis Exception - §18(f)	HUD Form 52860 Section 1-5 Only	
FO Certification (See Appendix 3)	FO prepares and sends to SAC. Revised form is attached.	
Environmental Review - Part 50 or Part 58	Prepared by FO or the Designated Responsible Entity (i.e., City, County, or State) and sent to the SAC	
Interim or Annual PHA Plan for Demolition/Disposition	Not a part of the demolition or disposition application. Must be submitted to the FO and approved for any demolition or disposition application to be approved by the SAC.	

Completion of the FO certification form has been a HUD requirement for several years. The form allows the local HUD Office to formally state whether it concurs that the conditions described in the application are present and that demolition or disposition is the most logical solution. The form has been revised to indicate that the FO has approved the PHA Plan or the Interim Plan for Demolition/Disposition.

9. DEMOLITION/DISPOSITION APPLICATION SUBMISSION FOR GROUP 1.

All Group 1 PHAs have submitted a completed copy of HUD Form 52860 and all related attachments. Group 1 PHAs that have submitted a disposition application, may wish to obtain a waiver of the debt, if there will be proceeds from the proposed sale. In accordance with §18(a)(5), in order to obtain a waiver of the requirement for the application of proceeds for repayment of debt, the PHA must submit a written request for the waiver along with its disposition application and the following certification. The certification should be signed by the Executive Director and dated.

The _____ certifies that it will use the net proceeds of any disposition -

- (A) for the provision of low-income housing or to benefit the residents of the PHA; or
- (B) for leveraging amounts for securing commercial enterprises, on-site in the PHA, appropriate to serve the needs of the residents.

10. SUBMISSION AND REVIEW OF DEMOLITION/DISPOSITION APPLICATIONS.

The SAC is responsible for reviewing demolition and disposition applications and recommending approval to the Assistant Secretary for Public and Indian Housing. Application review is done in coordination with the local HUD Field Office and with its concurrence. The SAC also coordinates, as necessary, with the Office of Litigation, the Office of Fair Housing and Equal Opportunity, as well as other Centers such as, the Troubled Agency Recovery Center (TARC). A PHA may call the SAC for technical assistance in preparing its application. The Director of the SAC is Ainars Rodins. The telephone number is (312)-886-9754.

Demolition/Disposition applications are to be submitted to the SAC and a copy provided to the local HUD Office. Demolition/Disposition applications are to be submitted on the HUD Form 52860. The form is available on the INTERNET. The address of the SAC is:

The Office of Public Housing
Special Applications Center (SAC)
77 West Jackson Boulevard
Room 2401
Chicago, IL 60604

For those Public Housing Agencies (PHA's) with Internet capability, it is now possible to submit your application for demolition and/or disposition to the Department via the Internet directly to the SAC. The web site address is :
<http://www.hud.gov/pih/sac/sachome.html>.

/s/
Harold Lucas, Assistant Secretary
for Public and Indian Housing

Attachment 1
Attachment 2
Attachment 3