

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

Special Attention of: NOTICE PIH 2003-9 (HA)

Regional Directors; Issued: March 27, 2003
HOPE VI Coordinators; Expires: March 31, 2004
Public Housing Directors;
Public Housing Agencies

Cross References:
Notice PIH 99-19(HA)

Subject: Demolition/Disposition Processing Requirements Under the 1998 Act

1. PURPOSE.

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 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 the Quality Housing and Work Responsibility Act (QHWRA) of 1998, (P.L. 105-276), (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. The Quality Housing and Work Responsibility Act was signed on October 21, 1998.

2. HOPE VI DEMOLITION.

Under Section 535 of QHWRA, 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 QHWRA date of enactment) 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 HOPE VI Notices of Funding Availability published in the Federal Register.

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.3/31/2005). 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 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 Field Office 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 Special Applications Center (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 Quality Housing and Work Responsibility Act include the following:

- A Public Housing Agency (PHA) must certify that: (a) its demolition or disposition application meets the statutory criteria; (b) its demolition or disposition is authorized in the **Public Housing Agency Plan** and is consistent with the Agency 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; [PHAs with debt that is not permanently financed, and which has been earmarked for forgiveness, must complete the separate documentation required and provide it to the HUD Field Office, if they intend this to take place.]

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.

- 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 as outlined in Section 531(a)(4) of the Act and detailed in the application submission form, HUD 52860; 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.

PHA Agency Plan Requirement - Under Section 531 of QHWRA, 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 must have certified that the actions contemplated in the public housing agency plan comply with this section; Rules governing Public Housing Agency Plans are contained in 24 CFR 903. Generally PHAs are required to submit a 5-Year Plan and an Annual Plan. Annual plans must include a description of any public housing development, or portion thereof, for which the PHA has applied or will apply for demolition and/or disposition approval under section 18, and a timetable for demolition and/or disposition. A process exists for the application and approval of demolition and/or disposition that is separate, and in addition to, that for PHA Agency Plan approval, as set out in 24 CFR 970.8 and form HUD-52860.

PHA's must ensure that the Annual Plan is consistent with applicable Consolidated Plans. Consolidated Plans include a certification that requires the preparation of an Analysis of Impediments (AI) to Fair Housing Choice, and the taking of appropriate actions to overcome the effects of any impediments identified through the Analysis and the maintenance of records reflection the analysis and actions.

The demolition or disposition application must be submitted to the Special Applications Center (SAC) for review and approval. As part of the application, a PHA must certify that the proposal is consistent with the Agency Plan and any voluntary compliance agreements, court orders final judgments, etc.

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.

After the certification is received by the SAC, the SAC verifies information including that the environmental review has been completed. An application may not be approved until the environmental review is completed. After the application has been reviewed at the SAC, a letter from the Department stating whether the application has been approved or disapproved is sent to the PHA. The Field Office is also notified of this decision.

C. Implementation of Four New Provisions -

The Department has implemented four specific provisions of the Quality Housing and Work Responsibility Act for all applications. These four new provisions were effective as of October 21, 1998, the date of enactment of this Act, as described in the QHWRA 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.

6. NEW APPLICATION SUBMISSION REQUIREMENTS

A. Justification for Whole or Partial Demolition or Disposition:

1. The Department has dropped the certification form for demolition/disposition applications formerly found in Appendix 1 to Notice 99-19. The submission of this information has been simplified and in part incorporated into the demolition/disposition application itself.

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. The issues raised by the local government

and the PHA's response to the general issues should be summarized. 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 dwelling 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 QHWRA 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 previous 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 1 for revisions to 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.) PHAs must 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. Statements that these actions will be taken is included among the certifications PHA Directors must make in Section 2 on form HUD 52860. Section 8 assistance is available from the Department to assist in the relocation of residents, depending on funding availability.

The Department published on September 17, 2002, CPD Notice 02-08, "Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), As Amended, in HOPE VI Projects." Although the Notice outlines URA requirements and addresses issues related to only the HOPE VI Program, PHAs may use this document as a framework for operating its relocation assistance activities as they apply to this portion of the Act as well. The principles outlined in this Notice are sound and have been used successfully for many years.

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, without a site and neighborhood standards review, 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 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 Capital Fund (CFP) Program. 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 local HUD office or HUB.

I. 24 CFR Part 970 -

In addition to the new provisions 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.

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)(c)(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 1)	Resident Organization Opportunity to Purchase
24 CFR 970.14 (a) and (b)	Reports & Records

Even though the URA no longer applies to most forms of Demolition/Disposition, PHAs must offer opportunities to all displaced persons to relocate to decent, safe, sanitary and affordable housing of their choice on a nondiscriminatory basis, without regard to race, color, religion, sex, national origin, disability, familial status or age. They must also carry out their relocation programs in accordance with the civil rights certifications found on page 2 of Form HUD-52680, Demolition/Disposition Application, i.e., compliance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and affirmatively furthering fair housing.

J. Note: Section 970.4(c) does not yet reflect the applicability of environmental procedures under 24 CFR Part 58. However, Part 58 does apply to Part 970 and is the primary environmental procedure to be followed despite its omission from §970.4(c).

National Environmental Policy Act (NEPA) and Related Federal Laws and Authorities:

Activities under part 970 are subject to HUD environmental regulations in 24 CFR part 58 “Environmental Review Procedures for Entities Assuming HUD Environmental Review Responsibilities”. However, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of 24 CFR part 50 Protection and Enhancement of Environmental Quality, if a PHA objects in writing to the responsible entity performing the review under part 58.

The PHA, its project partners and their contractors may not dispose of or demolish public housing under this Notice, or commit or expend HUD or local funds for such activities, until the responsible entity (as defined in § 58.2) has completed the environmental review procedures required by part 58 and the environmental certification and RROF have been approved or HUD has performed an environmental review under part 50 and has notified the PHA in writing of environmental approval of the property. HUD will not release

grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the recipient submits and HUD approves its RROF (where such submission is required).

Irrespective of whether the responsible entity in accord with part 58 (or HUD in accord with part 50) performs the environmental review, the PHA shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The PHA also shall carry out mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate eligible property.

The proposed demolition or disposition of four or less dwelling units is categorically excluded from the environmental assessment required under the National Environmental Policy Act, but subject to the applicable related Federal laws and authorities cited in §§ 58.5, 58.6 and 50.4.

Where demolition is made necessary by disasters, expedited procedures are allowed under § 58.33 and 40 CFR 1506.11.

PHA's are to integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays, and to head off potential conflicts (40 CFR 1501.2).

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.

Information Required	Brief Description	Submitted
Form HUD 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.	
Local Government Consultation - §18(b)	Description, Letter from the Chief Executive Officer	
Documentation of Offer to Sell to Resident Organization- Disposition Only - §18(c)		
De Minimis Exception - §18(f)	Form HUD 52860 Section 1-5 Only	
Field Office Certification (See Appendix 2)	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	
Annual Agency 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.	
Relocation Plan	Including Certification to Nondiscrimination and Affirmatively Furthering Fair Housing	

Completion of the FO certification form (new Appendix 2) 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 Public Housing Agency Plan.

The Department may waive the requirement for net proceeds from disposition to be used to repay outstanding debt if the PHA intends to use the proceeds for one of the purposes allowed by the Statute:

- (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.

A PHA that intends to use disposition proceeds for these purposes and wishes to request a waiver of the requirement to repay project debt should check the box provided on form HUD-52860 under Section 5, item 12A.

10. SUBMISSION AND REVIEW OF DEMOLITION/DISPOSITION APPLICATIONS.

The SAC is responsible for reviewing and approving demolition and disposition applications. Any recommendations for disapproval of applications are referred for

decision 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, ext. 2816.

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 Form HUD 52860. The form is available on the SAC website as noted below.

The Demolition/Disposition module for the PIH Information Center (PIC), will be enabled soon. The capability will exist for PHAs to submit electronically in PIC, applications for the removal of federal low-rent public housing units. This will allow for a streamlined process, in which the information required will be tailored for the category of the request. Electronic submission requirements in PIC will help ensure that PHAs are aware of the information needed to make their application complete. This should shorten the time needed for the review of applications. More information will be available on the PIC web site at:

<http://www.hud.gov/offices/pih/systems/pic/index.cfm>

The address of the SAC is:

The Office of Public Housing
Special Applications Center (SAC)
77 West Jackson Boulevard
Room 2401
Chicago, IL 60604-6413

The SAC web site address is: <http://www.hud.gov/offices/pih/centers/sac/>

/s/

Michael Liu, Assistant Secretary
for Public and Indian Housing

Attachments (2)