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Public Housing Divisions; Fair  
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Notice PIH 96-60(HA)  
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Subject: New Requirements for Designation of Public Housing  
Projects

**PURPOSE:** This Notice explains the new requirements for public housing agencies (PHAs) that plan to designate projects for elderly families only, disabled families only, or elderly and disabled families. Section 10(a) of the "Housing Opportunity Program Extension Act of 1996," signed by President Clinton on March 28, 1996, amended Section 7 of the United States Housing Act of 1937, which permits PHAs to designate projects after developing a HUD-approved Allocation Plan.

The Notice also explains the impact on Plans that were approved or disapproved under the previous requirements. In addition, it describes the revised Allocation Plan requirements for PHAs that plan to designate.

**EFFECTIVE DATE:** The provisions of Section 10 of the "Housing Opportunity Program Extension Act of 1996" went into effect when they were signed by the President on March 28, 1996. These provisions and the information in this Notice apply until the Department issues regulations revising 24 CFR Part 945, "Designated Housing - Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families."

**NON-DISCRIMINATION REQUIREMENTS:** Nothing in this Notice relieves a PHA from complying with the non-discrimination provisions of federal civil rights laws, including but not limited to Section 504 of the Rehabilitation Act and its implementing regulation at 24 CFR Part 8, the Fair Housing Act and its implementing regulation at 24 CFR Part 100, and Titles II and III of the Americans With Disabilities Act and their implementing regulations at 28 CFR Parts 35 and 36.

**APPLICABILITY:** This Notice and the requirements it describes apply only to projects (or portions of projects) operated by PHAs under the low-income public housing program. It does not apply to projects operated by Indian Housing Authorities.

**NO ALLOCATION PLANS REQUIRED TO MAINTAIN MIXED POPULATION PROJECTS.** PHAs that plan to leave all their projects as mixed population projects (projects that will not be designated for either elderly families or persons with disabilities exclusively) do not have to submit an Allocation Plan.

**WHAT A PHA PLANNING TO DESIGNATE A PROJECT MUST DO :** A PHA must develop an Allocation Plan that meets the requirements in the statute and in this Notice. The PHA's Board of Commissioners must pass a resolution adopting the Allocation Plan, pending HUD's notification of its approval.

HUD has not delegated authority for approval of Allocation Plans. Therefore, the PHA must send the Plan and the Board resolution to HUD in Washington, D.C., for review and approval or disapproval. The address is HUD, Office of Public and Assisted Housing Operations, Room 4206, 451 Seventh Street, S.W., Washington, D.C., 20410. The PHA also should send a copy of both documents to the PHA's local Field Office to the attention of the Public Housing Division and the Fair Housing Division.

**REQUIREMENTS FOR DESIGNATION OF PROJECTS :** Section 10 of the 1996 Act simplifies and modifies the requirements in Section 7 for PHAs planning to designate. In addition, it introduces requirements that were not present in the old law.

The major provisions of the revised Section 7 are described below. The requirements are the same whether a PHA designates a project for elderly families or for persons with disabilities. Guidance is given where clarification is necessary to explain the requirements to PHAs wishing to designate projects.

The Allocation Plan and project designations are in effect for five years from notification of HUD's approval.

**1. Contents of Allocation Plan.**

- a. Statutory Provisions. Section 7(d) requires a PHA to submit an Allocation Plan to HUD that:

- "(1) establishes that the designation of the project is necessary --

"(A) to achieve the housing goals for the jurisdiction under the Comprehensive Housing

Affordability Strategy [CHAS] under Section 105 of the Cranston-Gonzales National Affordable Housing Act; and,

"(B) to meet the housing needs of the low-income population of the jurisdiction;"

Guidance for Section 7(d)(1) .

- (1) The Allocation Plan must describe the housing goals of the jurisdiction over the next five years, as expressed in the CHAS. It also must show that designation is necessary to meet these goals.
  - (a) The CHAS is part of the jurisdiction's Consolidated Plan. There are two parts of this Plan to which the PHA should refer as it determines if the designation is necessary. One is the Strategic Plan, which includes both the goals and priorities for obtaining affordable housing and any obstacles to addressing under-served needs. The other is the annual Action Plan, which identifies resources that are expected to be available to meet priority needs.
  - (b) Communities with populations smaller than 50,000 are not required to develop Consolidated Plans. Thus, the PHAs in these communities will not have a local CHAS whose goals could be met through project designation. However, all states have state-wide Consolidated Plans. These state plans will contain a housing market analysis that describes the general characteristics of the state's housing markets, including information about the cost, supply, demand for, and condition of housing. In addition, the state plan may discuss regional housing goals or contain other information relevant to a decision to designate.

- (c) There will be situations where neither the local nor state CHAS nor the Consolidated Plan will provide the information the PHA needs to demonstrate that designation is necessary to accomplish the housing goals. In these cases, the PHA will have to rely on its demonstration that the designation is

necessary to meet the housing needs of the low income population of the jurisdiction. See discussion in paragraph (2) below.

- (2) The PHA must describe the housing needs of the low-income population of the jurisdiction over the next five years. It must show that the designation is required to meet these needs.

A PHA may need to rely on a range of sources to assess and describe the housing needs of its low-income population. Census data, is one but not the only, important resource. Data from a PHA's waiting lists (both public housing and Section 8), as well as statistics on recent public housing admissions and certificate and voucher use, may provide valuable information on the need of elderly families and persons with disabilities. This may be augmented by data provided by local advocacy groups and public and private service agencies familiar with the needs of these groups. The PHA also may have access to other useful sources such as local housing surveys.

- (3) HUD must be able to evaluate whether the PHA has shown that the designation is necessary to meet the goals in the jurisdiction's CHAS, as well as the housing needs of the low-income population. Therefore, the Allocation Plan should include the following information about low-income elderly families and persons with disabilities in the Authority's jurisdiction:
- (a) The numbers of these families.
  - (b) The numbers who need affordable, decent, safe, and sanitary housing.
  - (c) The numbers of each of these groups who live in the designated project(s).

- (d) The numbers being housed in other PHA projects or provided with housing assistance by the PHA or through other means.
- (e) The numbers who have been on the PHA's waiting list for low-income public housing for the past three years.
- (f) The numbers who were admitted to the designated project in the past three years.

b. Statutory Provisions. Section 7(d) requires an Allocation Plan that:

"(2) includes a description of --

"(A) the project (or portion of a project) to be designated;

"(B) the types of tenants for which the project is to be designated;

"(C) any supportive services to be provided to tenants of the designated project (or portion);

"(D) how design and related facilities (as such term is defined in Section 202 (d)(8) of the Housing Act of 1959) of the project accommodate the special environmental needs of the intended occupants; ...."

Guidance for Section 7(d)(2)(C) and (D)\_\_\_\_\_.

- (1) Supportive services are defined in Section 7(d)(2) as those services designed to meet the residents' special needs.

Elderly families and persons with disabilities living in mixed population projects may have certain supportive services available to them that the PHA provides directly or for which the PHA has arranged. Such services may include Meals-On-Wheels, transportation (to shopping, medical appointments, cultural events, etc.), public health services, rent pick-up, check-cashing, etc.

The Allocation Plan should describe the supportive services that are provided in the projects the PHA is designating.

- (2) The Plan must describe how the project's design and its "related facilities" are adapted to the special environmental needs of the tenants for whom the project is designated. Section 202(d)(8) of the Housing Act of 1959 defines "related facilities" as buildings or rooms, such as dining rooms or cafeterias, community rooms, workshops, day or outpatient health facilities or other essential service facilities that are suitable for elderly families or persons with disabilities.
- (3) The PHA needs to determine if there are members of

the non-designated group who need and want housing that has services or amenities but will not be able to use alternative housing resources because the services or amenities are not available. The PHA will still need to make sure that it can serve the housing needs of that individual.

- c. Statutory Provisions. Section 7(d) requires an Allocation Plan that:

"(2) includes a description of ...

"(E) any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted pursuant to this section."

Guidance for Section 7(d)(2)(E). The Allocation Plan should describe the housing resources that will be available to families in the non-designated group.

- (1) In some instances, a PHA's action to designate a project for either elderly families or persons with disabilities will conform with the CHAS. This will occur when the CHAS shows an increasing demand by the group for whom the designation is being made and a decreasing demand by the group for whom the availability of the PHA's housing is being reduced.

In these cases, the PHA can establish in its Allocation Plan that the designation is necessary to meet the CHAS. Since the designation does conform, the Plan will not have to identify additional housing resources to compensate for those to which the non-designated group will no longer have access.

- (2) There will be other cases where designation appears to conflict with the goals of the CHAS or the housing needs of the low-income population of the jurisdiction.

When this occurs, the Allocation Plan should show that the PHA can reallocate its own resources or identify other resources to eliminate that conflict.

- (3) As it develops the Plan, the PHA should consider:
  - (a) The housing needs of the non-designated group when the CHAS and/or a housing-needs assessment identifies them as needing more housing, not less. The PHA's projection

should be for the five-year term of the Allocation Plan.

- (b) The kinds and numbers of housing resources that the PHA identifies as being available to meet these needs, including a break-down by dwelling size.
  - i. Available housing resources are not limited to housing "owned or controlled" by the PHA. They may be PHA-operated housing resources or those operated by public or private profit or non-profit organizations.
  - ii. The PHA can create an additional housing resource by adopting a Section 8 local preference for the non-designated group or setting aside a portion of its Certificates/Vouchers for them. The PHA also may be able to obtain additional Certificates/Vouchers for the non-designated group.
- (c) If the housing resources upon which the PHA intends to rely actually are available to and affordable by the non-designated group.

Housing that has a long waiting list, lacks sufficient turnover or current vacancies, is too costly, or contains units of the wrong size should not be viewed as being "available" housing. For instance, three- or four-bedroom units are not a resource for persons who need one-bedrooms.

- (d) If service-linked housing should be included as a resource. A number of the assisted non-public housing resources for persons with disabilities require that residents accept services as a condition of receiving housing. Such service-linked housing cannot be considered a viable housing resource for those persons with disabilities who do not want and need the services. It is only "available" housing for the limited number who want and need service-linked housing.

- (e) The accessibility needs of non-elderly persons with disabilities.

When the non-designated group includes persons who need accessible housing, the Allocation Plan should show how the proposed resources will meet their accessibility needs. Whether housing resources are or will be accessible should be a major factor in the PHA's determination of their availability for those who need those features.

Generally, under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations, the PHA must pay for modifications of public housing units that are needed to accommodate the disabilities of public housing tenants. Owners of private-market rental housing do not have the same financial obligations to modify dwellings.

A PHA's reliance on housing resources that it does not own may create a problem for persons with disabilities who need dwellings modified. In anticipation of this, the Plan should address how the PHA will ensure that private-market rental housing is or will be made accessible, when required by the tenant. The tenant should not have to assume the financial responsibilities for installing (and later removing) the accessibility features.

If the PHA cannot arrange a mechanism for ensuring that needed accessibility modifications will be made, it should consider such options as developing other housing resources or excluding all its accessible dwellings from designation.

- (f) As the PHA analyzes the adequacy of the housing resources for the non-designated group, a useful bench-mark is the average time elderly families and non-elderly persons with disabilities have to wait for housing assistance. Current numbers can be compared with the estimated average time these applicants will have to wait over the next five years.

As a rule of thumb, if the waiting time is approximately the same, the housing resources are adequate and the non-designated families will not be harmed by the designation. On the other hand, if their waiting time is longer, it reasonably can be concluded that the non-designated families will be harmed. Where this is the case, the PHA should consider such options as:

- i. Identifying more housing resources for that group.
  - ii. Utilizing different combinations of housing resources.
  - iii. Reducing the number of dwellings being designated.
- (g) A jurisdiction that develops a Consolidated Plan must certify that it is promoting fair housing choice, including taking actions to overcome impediments to that choice. [24 CFR 91.225.] An Allocation Plan that created impediments to fair housing choice might conflict with a Consolidated Plan. To avoid this problem, the PHA may wish to provide a mix of housing types and subsidy options for people in the non-designated group.
- (h) The services and amenities available at the designated buildings may be necessary and desired by members of the non-designated group. If the services and amenities are not available in family housing projects or privately-managed housing, the Allocation Plan should describe how the PHA will meet the low-income housing needs of persons who need and want such services so they may participate in housing.

2. **Guidance on Consultation and Public Participation.** Section 7 no longer requires the PHA to consult with local officials and agencies and other interested parties in the development of the Plan, nor does it require the PHA to hold a public meeting and encourage public participation and comment on the draft. Therefore, the Department can no longer and will no longer disapprove a Plan for failure to engage in the

consultative process.

Nevertheless, the Department believes that consultation and public participation still have an important role to play in the PHA's development of its Allocation Plan, much as public participation and comment is critical to the development of a community's Consolidated Plan.

Section 7 links HUD approval of an Allocation Plan to the PHA's demonstration that designation is necessary to meet the goals of the CHAS and the low-income housing needs of the community. Therefore, it will assist the PHA if it develops its Plan using information from all those in a position to advise how the designation will meet those criteria. Tenant groups, advocacy groups, local agencies, etc., can be a valuable resource for the PHA as it formulates a Plan that serves these housing needs in the best way possible. These groups often can provide information otherwise unavailable to the PHA concerning the need for housing for both elderly families and persons with disabilities, services available in the community for these populations, and other housing resources that are appropriate for either population.

### 3. Treatment of Current Tenants Because of Designation.

#### a. No Mandatory Evictions Due to Designation.

Statutory Provision. Section 7(b) states that:

"...any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate...because of the designation...."

#### b. Voluntary Relocation Because of the Designation.

Statutory Provision. Section 7(c) states that the PHA must provide the following to persons and families who agree to be relocated in connection with a designation:

"(1) [A] notice of the designation and an explanation of available relocation benefits.

"(2) Access to comparable housing (including appropriate services and design features), which may include tenant-based rental assistance under Section 8, at a rental rate paid by the tenant

that is comparable to that applicable to the unit from which the person or family has vacated.

"(3) [P]ayment of actual, reasonable moving expenses."

Guidance for Section 7(c) .

- (1) The PHA may decide that, as part of its Allocation Plan, it wants to offer tenants in the non-designated group the opportunity to transfer out of the designated project. If this is the case, it must notify every such tenant in the designated project that he or she may relocate. The PHA should use the notice procedures that are in the PHA's lease with the tenant.
- (2) The notice must describe what the PHA's statutory obligations are to the people who are willing to relocate, including a description of available relocation benefits, the right to relocate to housing that is comparable in costs, services, and design factors, and payment of actual, reasonable moving expenses.

The notice must also state that relocation is **voluntary** and that **no one will be required to relocate**.

- (3) It is possible that, in some instances, using Section 8 Housing Vouchers may result in the tenant paying far more than 30 percent of his or her income for rent. To the extent that this occurs, providing tenants with Vouchers to relocate may not satisfy the requirement that the rental rate be comparable.

c. Effect of Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970.

Statutory Provision . Section 7(g) states that:

"No tenant of a public housing project shall be considered to be displaced for purposes of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 because of the designation of any existing project...."

Guidance for Section 7(g). The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 provides specified relocation benefits to persons who qualify as "displaced" from their homes or business because of the actions of either federal agencies or recipients of federal financial assistance. [See 46 U.S.C. 4601 et al.] Persons who are offered the opportunity to relocate because of a project designation do not qualify as "displaced" persons under this statute.

4. **Applicant/Tenant Pool for Projects Designated for Elderly Families.**

Statutory Requirements . Section (7)(a)(3) states that:

"If a public housing agency determines that there are insufficient numbers of elderly families to fill all the units in a project (or portion of a project) designated...for occupancy by only elderly families, the agency may provide that near-elderly families may occupy dwelling units in the project (or portion).

Guidance for Section 7(a)(3) . If, after a project has been designated for elderly families, the PHA finds that it does not have and cannot recruit enough elderly families to fill the dwellings, the PHA may place near-elderly families in these dwellings.

A near-elderly family is family whose head, spouse or sole member is at least 50 years but less than 62 years old.

5. **HUD Review and Standards for Determination of Non-Compliance.**

Statutory Requirements . Section 7(e) calls for limited HUD review of allocation plans intended to ensure that each plan is complete and complies with the requirements of subsection (d). The Plan is considered approved if HUD does not notify the PHA, not later than 60 days after receipt, whether the Plan complies with such requirements. Where HUD notifies the PHA of noncompliance, the notice shall specify the reasons for the noncompliance and any modifications necessary for the Plan to meet the requirements.

Section 7(e)(3) further provides that the Secretary may determine that a Plan does not comply with the requirements of the statute only if (1) the Plan is incomplete in significant matters required under subsection (d) or (2) there is evidence available to HUD that challenges, in a substantial manner, any information provided in the Plan.

Guidance for Section 7(e)(3)(A) . The first of the two statutory requirements for a determination of non-compliance is that the Plan be incomplete in significant matters. There are two different ways in which this may happen. The first occurs if the Plan lacks any of the statutorily-required elements (see items 1a, b, and c for more

information about each element). Second, it also occurs if there is a serious lack of information in its presentation about any of the required elements.

For example, the Plan would not comply if it does not include a discussion of how the designation is necessary to achieve the CHAS housing goals and meet the housing needs of the jurisdiction's low-income population [Sec. 7(d)(1)(A) and (B)]. It also would not comply if, for example, the discussion of the necessity for the designation does not contain any information on the housing needs of either the jurisdiction's low-income elderly population or its population of low-income persons with disabilities.

Guidance for Section 7(e)(3)(B). The second of the two statutory bases for a determination of non-compliance is that there is "evidence available to the Secretary that challenges, in a substantial manner, any information provided in the Plan."

In performing the limited review permitted under section 7(e), HUD will consider any evidence that challenges, in a substantial manner, any information provided in the Plan. This review will comprise two standards. First, the identification of needs set out in the Plan must not be plainly inconsistent with generally available, significant facts and data pertaining to low-income housing needs for the elderly and the disabled. Second, the designations in the Plan must not be plainly inappropriate to meeting the needs identified in the Plan.

Evidence challenging in a substantial manner the identification of needs as "plainly inconsistent" under this standard would occur, if the PHA's presentation of or rationale for its designation decisions was not supported by the data supplied with the Plan or otherwise available to HUD.

For example, the designation must not conflict with either the CHAS's housing goals or the equivalent goal of meeting the housing needs of the jurisdiction's low-income population.

Similarly, Plan actions can be determined "plainly inappropiate" to meeti

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On the former grounds, this applies to information within the Plan that conflicts with or contradicts other information in the Plan. For instance, a Plan says that the PHA will designate all its mixed population projects as projects for elderly families because this will assist the

jurisdiction in meeting the housing needs of the low-income population. However, in another part of the Plan, the PHA has included information that indicates that persons with disabilities have a greater need for affordable housing.

A determination of non-compliance because of "challenging" evidence also may result from information that comes from other sources. This could include information from documents like the Consolidated Plan or the CHAS. It also could include information from outside groups or individuals.

For example, a Plan may be "plainly inappropriate" in not providing for any housing resources for persons with disabilities when the PHA is designating projects for elderly families. The PHA may say it is not necessary since there are no persons with disabilities on its waiting list or no need in the community for housing for this group. A community group may produce evidence that refutes the PHA's statements by showing that there are many low-income persons with disabilities in the jurisdiction who need housing assistance. (To the extent that the Plan failed to include generally available needs information, it managed to have failed the "plainly inconsistent" standard.)

The Department invites interested members of the public to provide comments about the Plan. HUD encourages interested parties to write to HUD Headquarters if they have evidence that challenges or supports information in the Plan.

They may write to either of the following two offices:

Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of the Deputy Assistant for Public and  
Assisted Housing Operations  
Room 4204  
451 Seventh Street, SW  
Washington, D.C 20410

and

Department of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity  
Office of Program Compliance and Disability Rights  
Room 5240  
451 Seventh Street, SW  
Washington, D.C 20410

6. **Time-frames for and Contents of HUD Notification to PHA of Plan's Compliance/Non-Compliance with Statute.**

Statutory Provisions . Section 7(e) requires that HUD:

"(1)... notify each public housing agency submitting a plan whether the plan complies...not later than 60 days after receiving the plan. If...[HUD]...does not notify the public housing agency..., the plan shall be considered...to comply...and...[HUD]...shall be considered to have notified the agency of such compliance upon the expiration of such 60-day period."

"(2)...specify in the notice...the reasons for the noncompliance and any modification necessary for the plan to meet....[the]...requirements."

Guidance for Section 7(e)(1) and (2) . HUD has 60 days to review the initial submission of the Allocation Plan and each resubmission.

HUD must notify the PHA in writing whether the Allocation Plan complies with the statute. When the Plan does not comply, the letter must provide both the reasons for the non-compliance as well as the modifications that will make the Plan approvable.

For example, a notification might indicate that an Allocation Plan did not comply because:

- o It was missing required information.
- o It did not establish that the designation was necessary to meet the goals of the CHAS.
- o It reduced the housing available to the non-designated group, in conflict with the goals of the CHAS, without describing the PHA's plans for securing alternate housing resources.

7. **Extensions of Designation.**

Statutory Requirements . Section 7(f) states that all designations are in effect for five years from the date of HUD's approval of the Plan. This applies to Plans approved before and after the 1996 revisions to Section 7. Two-year

extensions beyond the five years are permitted when a PHA submits information needed to update the Plan.

**AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION OF ALLOCATION**

**PLANS:** Section 10(b) of the "Housing Opportunity Program Extension Act of 1996" authorizes funds to be appropriated for Section 8 Housing Certificates and Housing Vouchers so PHAs may implement approved Allocation Plans. On July 19, 1996, a Federal Register notice announced FY 1996 funding for approximately 2,000 Certificates and Vouchers for PHAs designating projects.

**STATUS OF APPROVED ALLOCATION PLANS, DISAPPROVED PLANS, AND PLANS BEING REVIEWED:**

1. Allocation Plans that were submitted and approved before March 28, 1996, are in effect, as they were approved. They do not have to be revised to meet the new requirements. However, they are now in effect for five years from the date of approval, not two years.
2. Allocation Plans that were disapproved before March 28, 1996, still are disapproved. If the PHA wants to submit a revised Plan, it must meet the new requirements.

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Kevin Emanuel Marchman, Acting Assistant  
Secretary for Public and Indian  
Housing