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## Section 18 Demolition & Disposition

Jane Hornstein, Special Applications Center

Chad Ruppel, Office of Field Operations



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## Section 18 Background

- Section 18 of the U.S. Housing Act of 1937 (as amended in 1998) removes the 1 for 1 public housing replacement requirement and provides broad authority to Public Housing Agencies (PHAs) to demolish or dispose of public housing
  - Section 18 is commonly referred to as "demo/dispo"
- [PIH Notice 2012-7](#) emphasized that HUD would generally only approve demolition or disposition applications if units were physically obsolete
- [PIH Notice 2018-4](#) expands PHAs' ability to use Section 18 to demolish or dispose of public housing to help PHAs reposition public housing to a more sustainable financial platform and access private capital
- Reviews and approvals by the Special Applications Center (SAC)



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# What happens under Section 18?

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



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# PHA Objectives

PHAs can use Section 18 Disposition to:

- Preserve the asset through repositioning
  - Rehabilitate with other financing (e.g., tax credits)
  - Project based TPVs at site (as Project-Based Vouchers)
- Dispose of the asset in open market
  - Asset beyond repair or in undesirable location
  - Generate proceeds to develop other low-income housing
  - Provide residents with TPVs (tenant-based assistance)
  - Other objectives: Exit public housing program

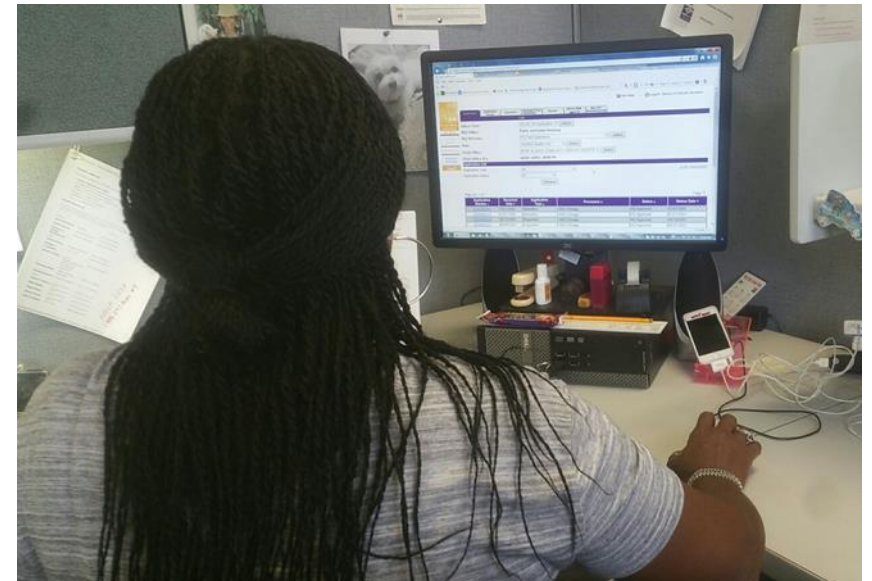


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# SAC Application Requirements

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







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# Justifications

## Demolition:

- Obsolescence: Physical, location or other factors
- De Minimis



## Disposition:

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



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# Obsolescence

## Physical Condition

- Scope of Work: Rehab Needs
  - Captures Immediate Needs (Repairs/ replacements needed in 3 years or less)
  - Third-party report (structural, environmental)
  - International Building Code (IBC)
- Cost-estimates
  - R.S. Means Cost-Index
  - Total Development Cost (TDC) estimates published annually
  - 57.14% of TDC non-elevator buildings or 62.5% for elevator buildings

## Location

- Area poses serious health or safety risks to residents
  - Examples: flooding, contaminated soils, noise, air quality, Superfund site
  - PHA cannot cure/mitigate cost-effectively
- Third-party documentation (environmental review)
- PHAs generally sell property at Fair Market Value (FMV)





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# De Minimis Demolition

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



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# Disposition: Health or Safety

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



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# Disposition: Infeasible Operation

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



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# Disposition: Scattered-Site Units

- Buildings
  - Non-contiguous
  - 4 or fewer units
- Unsustainable to operate and/or maintain
- Must have Relocation Plan
  - Allow residents to remain (through PBV) or provide tenant-based voucher
- Flexibility in Structuring Disposition
  - Sell at FMV on open market (generate proceeds)
  - Partner with related entity and sell at below FMV so units can be used as affordable rental housing, including PBV
  - Create local homeownership program



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# Disposition: Non-Dwelling Property

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

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



## Disposition: Very Small PHA

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



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## More Efficient/Effective Units

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

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

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



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## RAD-Section 18 Blend

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

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

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





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## Disposition to Whom?

- Separate legal entity under State law
  - PHA may retain ownership or control
  - May be non-profit of PHA
- Options:
  - Open market at FMV (Public Bid/Auction)
  - Negotiated Disposition at FMV (Identified Buyer)
  - Negotiated Disposition at below FMV (Identified Buyer)  
(commensurate public benefit)
  - Sale or Ground Lease



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# Commensurate Public Benefit

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



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# Property Valuation

- Appraisal Required if property disposed at FMV
  - Dated within the year of application submission
- Tax Assessor Opinion or other alternative method of valuation if property disposed at below FMV based on commensurate public benefit (e.g., development of affordable housing)



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# Proceeds

- Eligible Uses:
  - Relocation and reasonable closing costs (gross proceeds)
  - Modernization/Development of Public Housing (Cap Fund)
  - Operation of Public Housing (Op Fund)
  - RAD costs
  - Modernization or development of PBV units
  - Section 8 Housing Assistance Payment (HAP) shortages (if confirmed by HUD)
- SAC approval required
- Deposit under HUD-51999 (General Depository Agreement)



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# Resident Consultation

- In addition to consulting residents on the PHA Plan, PHAs must consult:
  - Residents of development(s)
  - Group representing residents of the development(s)
  - Group representing all residents of the PHA
  - Resident Advisory Board (RAB)
- Residents can submit written comments and PHA must provide those comments to HUD in application



# Relocation

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



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# Comparable Housing Resources

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

*PHA may be eligible to receive TPVs to provide the resources for this Section 8 assistance*



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# Public Housing-Only PHAs

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





## Impact on Public Housing Funds

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



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## HUD Processing

- Special Applications Center (SAC) processes Section 18 applications
- Local HUD Public Housing Field Office
  - Provides technical assistance regarding application requirements
  - Confirms environmental review and PHA Plan Requirements
  - Assists SAC staff in reviewing Section 18 applications as needed
- Fair Housing and Equal Opportunity (FHEO) conducts Civil Rights Compliance Review (if application include units)

# After HUD Approval

## **PHA is responsible for:**

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

## **Local Public Housing Field Office is responsible for:**

- Processing requests for TPVs (and facilitating partnerships for PH-only PHAs)
- Releasing DOT and approving Use Agreement (if applicable)
- Approving property for removal (RMI) status in PIC after demolition/disposition at PHA's request



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# Public Housing Close-Out

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



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# Additional Resources

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