



DEMOLITION AND DISPOSITION

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The demolition/disposition law and regulations require a PHA to apply to HUD to demolish or dispose of (sell) public housing. [Regulations at 24 CFR 970.7]

A special HUD office is in charge, the Special Applications Center (SAC).

A PHA can't take any action to demolish or dispose of public housing without HUD approval. And, a PHA should not re-rent units when they turn over while HUD is considering an application. [24 CFR 970.25]

The application must certify (promise) that the PHA has described the demolition or disposition in its Annual PHA Plan and that the description in the application is identical. (See page 4 about the PHA Plan.) [24 CFR 970.7(a)(1)]

⇒ Advocates should challenge an application that is significantly different.

RESIDENT PARTICIPATION

A PHA must prepare an application "in consultation" with tenants and any tenant organization at the project to be demolished or sold, as well as with any PHA-wide tenant organization and the Resident Advisory Board (RAB). See page 8 about the RAB

A PHA must include with an application, any written comments made by residents, resident organizations, or the RAB. A PHA must also indicate in writing how it addressed those comments. [24 CFR 970.9(a)]

⇒ HUD can deny an application if tenants, resident councils, and RABs were not consulted, so be sure to challenge a demolition or disposition application if residents were not consulted or if the "consultation" was grossly inadequate. [24 CFR 970.29(b)]

⇒ Did the PHA submit any written comments from residents and provide the PHA's response to those comments?

⇒ Advocates who might not be residents of the public housing to be demolished or sold should still attend any meetings about the proposed application; or, if an application has already been submitted, get a copy of it (form HUD-52860).

⇒ If an application has already been sent to HUD, write to HUD expressing your concerns, especially if there are errors or misstatements in the application. HUD can disapprove an application if the data and information the PHA provided is "clearly inconsistent". [24 CFR 970.29(a)]

DEMOLITION APPLICATIONS

Is the Public Housing Development “Obsolete”?

For demolition applications, PHAs must certify that a development is “obsolete,” either physically or in terms of location, and therefore no longer suitable as housing. [24 CFR 970.15(a)]

- **Physically obsolete** means that there are structural deficiencies that can’t be corrected at a reasonable cost. Structural deficiencies include faulty structural design, settlement of floors, and severe erosion. [24 CFR 970.15(b)(1)(i)]
 - Other substantial physical issues can include deficiencies in major systems such as plumbing, electrical, heating and cooling, roofs, doors, and windows. [Notice PIH 2019-04, page 6]
 - To show that a development is physically obsolete, a PHA must submit a detailed scope of work on form HUD-52860-B. The scope of work should describe major systems needing repair or replacement, need to remove lead-based paint and asbestos hazards, and need to make accessibility improvements for people with mobility, vision, hearing, other impairments. [Notice PIH 2019-04, page 6]
 - “Reasonable” cost is defined as less than 62.5% of total development costs for buildings with elevators and 57.14% for other buildings. [24 CFR 970.15(b)(2)]

⇒ Is a project really “structurally” obsolete?

- **An obsolete location** means the surrounding neighborhood is too deteriorated, or has shifted from residential uses to commercial or industrial uses. It can also mean environmental conditions make it unsuitable for residents to live at. [24 CFR 970.15(b)(1)(ii)]
- **“Other factors”** can also be considered, things that “seriously affect the marketability or usefulness” of the development. [24 CFR 970.15(b)(1)(iii)]

⇒ Be ready to challenge the “location” factors and “other” factors because they are vague and open to abuse by PHAs.

“De Minimus” Demolition

PHAs don’t have to apply to HUD to demolish fewer than 5 units or 5% of all units over a five-year period. The units being demolished must either be beyond repair or make room for services such as a child care facility, laundry, or community center. HUD calls this “de minimus” demolition. [24 CFR 970.27]

DISPOSTION APPLICATIONS

For disposition applications the PHA must certify that keeping the development is not in the best interests of residents or the PHA for any one of three reasons:

1. Conditions in the area surrounding the development (such as commercial or industrial activity) have a negative impact on the health and safety of residents, or have a negative impact on the PHA's operation of the project. [24 CFR 970.17(a)]
 - A negative impact on a PHA's operation of a project could mean a lack of demand for the units. The PHA would have to show high long-term vacancy rates due to factors such as declining population in the area or due to the property being located in an isolated area cut off from transportation and access to community amenities such as stores and schools.
[Notice PIH 2019-04, page 3]

⇒ Challenge the accuracy of any of claims that commercial or industrial activities cause significant harm to residents.
2. Sale or transfer of the property will allow the PHA to buy, develop, or rehab other properties that can be more efficiently operated as low-income housing. [24 CFR 970.17(b)]
 - Low-income housing is limited to other public housing, project-based voucher (PBV), or Section 8 project-based rental assistance (PBRA) units.
[Notice PIH 2019-04, page 4]
 - A PHA must show that replacement units are better. For example, they are: energy efficient; in better locations for transportation, jobs, or schools; or reduce racial or ethnic concentrations of poverty. [Notice PIH 2019-04, page 4]
3. Sale of the property is "appropriate" for reasons consistent with the PHA's goals, the PHA Plan, and the purpose of the public housing act. [24 CFR 970.17(c)]
 - Notice PIH 2019-04 (page 4) gives five examples, including:
 - Small PHAs with 50 or fewer public housing units that no longer want to operate public housing.
 - Rental Assistance Demonstration (RAD) properties converting to project-based vouchers (PBVs) can use Section 18 disposition for up to 25% of the units.
 - * All RAD relocation requirements apply to residents of the Section 18 units, including: resident notice and comment requirements, right to return, and relocation assistance.
 - * RAD's one-for-one replacement provision applies.

RESIDENT RELOCATION PROVISIONS

- The demolition or disposition application must have a relocation plan.
[24 CFR 970.7(a)(6)]
- Demolition or disposition can't start until all residents are relocated.
[24 CFR 970.21(b) & (e)(1)(ii)]
- A PHA must give residents 90 days advance notice before being relocated.
[24 CFR 970.21(e)(1)]
- A PHA must offer each household comparable housing that meets housing quality standards (HQS) and that is located in an area that is not less desirable.
[24 CFR 970.21(a)]
- Comparable housing may include tenant-based or project-based rental assistance, or housing run by or assisted by the PHA that have rents comparable to the rent paid by a household at the public housing development.
[24 CFR 970.21(a)]
 - Tenant Protection Vouchers (TPVs) are not automatically provided – the PHA must apply for TPVs. Depending on how much Congress has appropriated for TPVs, and depending on HUD's priorities for the year (indicated in a PIH Notice), there might not be enough TPVs for residents.
[Notice PIH 2019-04, page 9]
- A PHA must pay for actual relocation expenses, however, the Uniform Relocation Act (URA) does not apply.
[24 CFR 970.21(e)(1) & (2)]

DEMOLITION AND DISPOSITION and THE PHA PLAN REGULATION

HUD approval of an Annual PHA Plan does not mean HUD has approved a demolition or disposition application.

Remember, the process for applying for and obtaining HUD approval for demolition or disposition is separate from and in addition to the Annual PHA Plan process.

What Is the PHA Plan?

[24 CFR 903.7(h)]

The PHA Plan is the gathering together of a PHA's key program intentions (such as demolition or disposition) and policies (such as the Admission and Continued Occupancy Plan). Each year, all but very small PHAs must submit an Annual PHA Plan 75 days before the beginning of the PHA's fiscal year.

You will also hear about the "5-Year Plan" which all PHAs must send to HUD every five years. The 5-Year Plan merely states a PHA's mission, goals, and objectives.

Does Your PHA Even Have to Send in a PHA Plan?

Congress changed the PHA Plan law in 2008, calling PHAs that administer a combination of fewer than 550 units of public housing and vouchers “Qualified PHAs”. About 70% of all PHAs are Qualified PHAs. They are not required to submit an Annual PHA Plan. However, a Qualified PHA must submit an Annual PHA Plan if it was designated as “troubled” as a result of its most recent Public Housing Assessment System (PHAS) score or had a failing Section Eight Management Assessment Program (SEMAP) score during the prior 12 months.

Qualified PHAs must still submit a 5-Year PHA Plan. They must also have a public hearing each year regarding any proposed changes to the PHA’s goals, objectives, or policies. In addition, they must have Resident Advisory Boards (RABs, see page 8) and respond to RAB recommendations at a public hearing.

To find out whether your PHA is a Qualified PHA, go to https://www.hud.gov/program_offices/public_indian_housing/pha/lists

(There no longer seems to be a reliable source to learn whether your PHA is a “troubled” or “high performer”. You can go to HUD’s Housing Authority Profiles webpage, <https://pic.hud.gov/pic/haprofiles/haprofilelist.asp> When you get to the list of housing authorities in your state, you will see your PHA’s “HA Code” on the left hand column. Click on it. Sometimes the site will indicate whether a PHA is a “High Performer” or a “Standard Performer” – but many PHAs have no indication.)

For PHAs That Must Send In an Annual PHA Plan

For PHAs that do have to send in an Annual PHA Plan, there are four types of Annual PHA Plan templates to be used for different categories of PHAs:

- **Standard PHAs and Troubled PHAs.** A Standard PHA owns or manages 250 or more public housing units and any number of vouchers, for a combined total of *more* than 550; and the PHA was designated “standard” by its most recent PHAS and SEMAP assessments. A Troubled PHA has an overall PHAS or SEMAP Score less than 60%.
- **High Performer PHAs.** A High-Performer PHA owns or manages any number of public housing units and vouchers, for a combined total of *more* than 550; and the PHA was designated a “high performer” by its most recent PHAS and SEMAP assessments. They have a streamlined PHA Plan template.
- **Small PHAs.** A Small PHA owns or manages fewer than 250 public housing units and any number of vouchers, for a combined total of *more* than 550; and the PHA was not designated as troubled by the most recent PHAS or SEMAP assessments, or at risk of being designated as troubled. They have a streamlined PHA Plan template.
- **HCV Only PHAs.** A Housing Choice Voucher (HCV) Only PHA does not own or operate any public housing units, but does administer *more* than 550 vouchers; and the PHA was not designated as troubled by its most recent SEMAP assessment. They have a streamlined PHA Plan template.

The PHA Plan Template

The current computer-based templates are much shorter and less helpful than those used before 2008. They no longer contain everything important to residents. They simply ask whether some of the PHA Plan elements have changed since the previous year. The PHA just checks a box “Yes” or “No”. If the answer is “Yes” the PHA is supposed to describe the change.

⇒ It is up to you to ask your PHA for the previous year’s PHA Plan and the upcoming year’s PHA Plan to figure out if the description of the change is accurate.

The PHA Plan templates ask (at B.2) whether the PHA intends to undertake demolition or disposition during the PHA’s current fiscal year, and for new demolition/disposition activities to describe the public housing for which the PHA has applied or will apply for approval.

- To see the HUD-required templates go to https://www.hud.gov/program_offices/public_indian_housing/pha and scroll down to “Available Templates”.

Resident and Public Participation with the PHA Plan

The law and regulations provide a modest public participation process. [24 CFR 903.17]

- The PHA must conduct “reasonable” outreach to encourage broad public participation.
- The PHA’s governing board must invite public comment regarding a proposed PHA Plan and conduct a public hearing to discuss it. The hearing must be held at a location convenient to PHA residents.
- At least 45 days before the public hearing, the PHA must:
 - Make the proposed PHA Plan, required attachments, and other relevant information available for public inspection at the PHA’s main office during normal business hours.
 - Publish a notice indicating the date, time, and location of the public hearing, as well as the availability of the proposed PHA Plan.
- The final, HUD-approved PHA Plan, along with required attachments and other related documents, must be available for review at the PHA’s main office during normal business hours. [24 CFR 903.23(e)]

⇒ If any of these public participation requirements were not truly met, file a complaint with HUD, specifying the shortcomings.

Send Complaints to HUD

There are four places in the regulations indicating that writing and calling HUD to complain about the PHA Plan might secure attention and relief from HUD.

1. If a RAB (see page 8) claims in writing that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a “finding” and hold up approval of a PHA Plan until this failure is remedied. [24 CFR 903.13(c)(2)]
2. The regulations declare that before approving a PHA Plan, HUD will review “any...element of the PHA’s Annual Plan that is challenged.” [24 CFR 903.23(b)]
3. HUD can decide not to approve a PHA Plan if it or one of its components:
 - Does not provide all of the required information.
 - Is not consistent with information and data available to HUD.
 - Is not consistent with the jurisdiction’s Consolidated Plan. [24 CFR 903.23(c)]
4. To ensure that a PHA complies with all of the policies adopted in its HUD-approved PHA Plan, “HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with the plan...HUD will take whatever action it deems necessary and appropriate.” [24 CFR 903.25]

Mid-Year Changes to the PHA Plan

“Significant” amendments (such as an application to demolish or dispose of public housing units) can only take place after formal adoption by the PHA board of directors at a meeting open to the public, and after subsequent approval by HUD. “Significant” amendments are subject to all of the RAB and public participation requirements. [24 CFR 903.21]

The PHA Plan must identify the basic criteria for determining what constitutes a “significant” amendment to either an Annual PHA Plan or a 5-year PHA Plan. [24 CFR 903.7(r)(2)]

- ⇒ Residents and advocates should be alert to changes to the PHA Plan at any time of the year because any policy or program in it can be modified.
- ⇒ Advocates and residents should review the PHA Plan’s criteria defining “significant” amendments, and work to change them if they are written so that few modifications would be judged “significant” and therefore escape the RAB and public participation requirements.

Resident Advisory Boards (RABs) and Drafting the PHA Plan

- Each PHA must establish at least one “Resident Advisory Board” (RAB) to make recommendations and assist in other ways in the drafting of the PHA Plan and any “significant” amendment or modification to it.

- RAB membership must reflect and represent residents served by the PHA.

[24 CFR 903.13(a)]

- If there is a jurisdiction-wide resident council, then the PHA must appoint it or its representatives as the RAB.

- If there is not a jurisdiction-wide resident council, but there are project-based resident councils, then they or their representatives must be appointed to serve on one or more RABs.

- Where Section 8 residents make up at least 20% of all assisted households, the PHA must make sure that they have reasonable representation on the RAB(s).

[24 CFR 903.13(b)]

- To ensure that RABs can be as effective as possible, the PHA must allocate “reasonable” resources to provide “reasonable” means for the RAB to:

- Become informed about programs covered by the PHA Plan;
- Communicate with residents in writing and by telephone;
- Hold meetings with residents; and,
- Access information through the internet.

[24 CFR 903.13(a)(2)]

⇒ Does the RAB truly reflect and represent the residents?

⇒ Was the RAB truly involved in drafting the PHA Plan?

⇒ Did the PHA provide the RAB with adequate resources to participate effectively?

- The PHA must “consider” RAB recommendations when preparing a final PHA Plan or any significant amendment or modification to it. A copy of the RAB’s recommendations and a description of whether those recommendations were addressed must be included with the final PHA Plan.

[24 CFR 903.13(c)]

- “Small” PHAs submitting “streamlined” Annual PHA Plans must certify that the RAB had an opportunity to review and comment on any policy or program changes over the course of the year, including those relating to demolition/disposition.

[24 CFR 903.12(c)(3)]