



Public Housing Repositioning Wednesday Webinar Series: You Have SAC Approval: What Now?

September 28, 2022

Webinar Topics	Dates
<u>RAD and Section 18 New Blend Options</u>	February 17, 2021
<u>Preservation Strategies</u>	March 17, 2021
<u>Environmental Review Procedures</u>	April 14, 2021
<u>Developer Roles for Repositioning Public Housing</u>	June 30, 2021
<u>Choice Neighborhoods and Repositioning</u>	October 27, 2021
<u>Homeownership Programs for Public Housing Authorities</u>	February 9, 2022
<u>Disaster Strikes!</u>	June 22, 2022
<u>Protecting Residents and Evaluating Property Options</u>	June 22, 2022
<u>Repositioning Non-Dwelling Property: Overview of Tools and Strategic Tips</u>	July 27, 2022
 You Have SAC Approval: What Now?	September 28, 2022

All webinars are recorded and posted at www.hudexchange.info



Why are we here?

The goal of this webinar series is to help explain and discuss common issues in the repositioning process.

Today's webinar will provide an overview of what needs to happen after a PHA receives a SAC approval.

- Use agreements
- Release of the Declaration of Trust (DOT)
- Preparing units for the new use (including PBV)
- Tenant Protection Vouchers (TPVs) and resident relocation
- Operating and Capital funding changes
- PIC reporting requirements
- Proceeds requirements
- Inspection requirements; and
- Informing HUD of delayed and changed plans.



Presenters

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A Note on Timing

Congratulations on your Approval from the SAC!

HOWEVER, the SAC approval may include CONDITIONS and required next steps. The process for completion is not always linear.

Many circumstances require additional leg work by the PHA prior to closing:

- Energy Performance Contracts (EPCs)
- Applying for Tenant Protection Vouchers (TPVs)
- Following the Project-Based Voucher (PBV) regulations at 24 CFR part 983 and [PIH Notice 2017-21](#)
- Ensuring Relocation and Environmental Review requirements are met
- Keeping HUD informed of changes and determining whether an approval amendment is needed
- Preparing for closing (Use Agreements, DOT Releases, etc.)

Relocation

URA does not apply. Follow provisions of 24 CFR 970.21.104(d) if HOME/CDBG funds

Must provide families with a 90-day notice (EVEN IF NO PHYSICAL DISPLACEMENT)

- Cannot issue 90-day notice until AFTER SAC approval
- Families can voluntarily consent to move (accept HCV in units) sooner

Comparable housing can include:

- HCV tenant-based assistance (oral briefing and actual lease up required)
- Project-based assistance (RAD, PBV)
- PH Unit
- Unit operated or assisted by the PHA at comparable rental rate (over-income families)

PHAs can apply to HUD for TPVs as a resource to assist with relocation

Must provide “actual and reasonable” relocation expenses and necessary counseling

PHA cannot complete disposition until families are relocated

PHA puts family in “End of Participation” (EOP) status in PH and adds family to HCV in HUD-50058 at lease up

If relocation is delayed beyond “days of relocation” field in DDA, inform FO—Op Fund accuracy!



Tenant Protection Vouchers (TPVs)



- **HUD will not automatically issue TPVs**
- PHAs must submit a TPV application (HUD-52515) and leasing schedule to their local HUD Field Office
- Submit 30-60 days before start of relocation. Consistent with “start of relocation” in timetable
- SAC approval determines maximum number and type of vouchers (Relocation vs. Replacement)
- PHAs without an HCV program must partner with another PHA who can administer the TPVs
- Financial Management Division (FMD) determines final TPV award based on HCV Funding Notice (and availability of funds) when application submitted. Because of recent funding shortage, HUD may only provide funding for occupied units at the time of removal.

For more information, see the [Tenant Protection Voucher page](https://www.hud.gov/hcv) at www.hud.gov/hcv.

Project-Based Vouchers (PBVs)



- SAC's approval does NOT constitute PBV approval
- If PHA plans to attach PBV assistance to the units, PHA takes necessary steps to enter into a PBV HAP for the units with new entity (owner)—PIH Notice 2017-21, 24 CFR part 983
- HOTMA provides certain exceptions to PBV requirements when PBV units are placed on a PH site (program and project cap, competition)

Please go to www.hud.gov/hcv and click on the “Project Based Voucher” icon to find more information—including program guidance, webinars, FAQs, and other training materials.

Section 18 Disposition Process

1. Receive SAC Approval Letter.

- Disposition is not approved yet! SAC Approval is conditional. HUD Field Office must approve/sign Release of Declaration of Trust and Use Agreement, if required.

2. Request Model Documents and Disposition Submission Checklist from Field Office.

- Contact HUD Field Office well before closing deadline. Not a lengthy review process but does take some time.
- Model documents and dispo submission requirements vary between HUD offices/regions. Submission requirements generally include: Dispo Narrative, Title Report w/t exception doc's, Declarations of Trust, Draft Release, Draft Use Agreement, Draft Grant Deed, General Depository Agreement, etc.

3. Submit Disposition Package/Request to Release Declaration of Trust to HUD Field Office and OGC Field Counsel for review.

4. Once all comments addressed, HUD authorized signatory will sign Release of Declaration of Trust and Use Agreement (HA may need to provide mobile notary) and authorize recording/disposition.

5. Post-Closing Requirements (PIC Removal, Dispo Proceeds Reporting, etc.)



Use Agreement

- Required by SAC if disposition is approved at below FMV based upon a “commensurate public benefit (CPB)” at the property
- Generally, a 30-year term required
- No national standard form of UA. Request model UA from local HUD Field Office/OGC Field Counsel. Generally, UA must be recorded in a first priority position
- PHA responsible for monitoring UA. HUD encourages PHA to annually report to its board of directors to confirm the Property follows the UA



DOT Release



- PHA submits request to FO as soon as possible.
- HA (or HA attorney) responsible for preparing draft form of DOT release
- May be full DOT release or partial DOT release, depending on what SAC approved and acreage under DOT. HA must include legal description of the property approved by SAC in request to FO
- In conjunction with this request, HA submits other disposition documents that FO requests—including draft use agreement, transfer deed, ground lease, and/or evidence relocation is complete (if requested by the FO)



Disposition Transaction

- After FO signs DOT release (and approves use restriction, if applicable) and relocation is complete, HA can carry out the disposition
 - Public Bid (FMV). PHA exercises diligence in selling on open competitive market
 - Negotiated Disposition (FMV or below FMV). Must be disposed to the entity identified in the application and SAC approval.
- Record DOT release and use restriction in county records.
- Disposition transaction (including duration) will vary depending on number of units (i.e., one high rise vs. scattered sites) and whether disposition is via public bid on open market (FMV) or through a negotiation with an identified acquiring entity (usually below FMV) based on continued affordable housing use)
- If PHA entered into an Option Agreement (sale or ground lease) (i.e., to evidence site control for LIHTCs) that was conditioned on HUD approval of the dispo application, PHA can execute the sale agreement or ground lease.

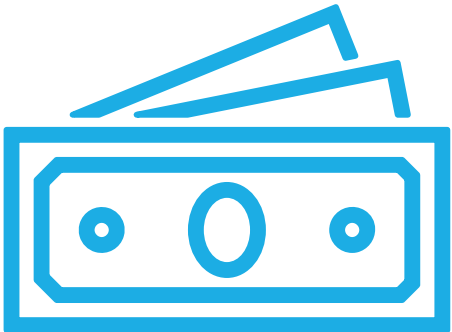


Removing PH Property from Inventory

- Once the application has a status of HQ Approved and the PHA has taken the appropriate steps to remove the inventory, the PHA will need to create a removal transaction in PIC to reflect what inventory was removed and when it was removed.
- The PHA will need to provide documentation to the field office to support the information they enter in the removal transaction.
- PHAs should discuss with their field office what documentation is appropriate depending on the application type.
- PHA MUST report Property (acreage, non-dwelling, and units) as Removed from Inventory (RMI) in IMS/PIC within 7 days of disposition (ground lease/sale and release of DOT) or within 7 days of last payment on demolition contract.
- FO approves PHA request in PIC, marking units as RMI
- [Removing Buildings, Units, and Land From Inventory](#)



Proceeds



- **Gross Proceeds**
 - Relocation and Cost of Disposition (transaction)
 - Application (and SAC approval) includes an itemized list of approved costs
- **Net Proceeds**
 - Report on FDS—receipt and expenditure
 - Hold under GDA (HUD-51999)
 - Application (and SAC approval) identifies a specific use
 - If PHA determines an alternate use for net proceeds, PHA is not required to request or receive HUD (SAC or Field Office) approval for the new use. PHA must ensure alternate use (and reporting) fully complies with S18 and other HUD ([PIH Notice 2020-23](#)) requirements

Inspections

- During SAC review? **Yes**
- After SAC approval? **Yes**
- Normal REAC inspections apply up to RMI? **Yes**

As long as that property is under the Annual Contributions Contract (ACC) and residents are living there, the property is subject to inspection in accordance with the PHAS rule (24 CFR 902.13)

Spending Public Housing Funds at the Property



- PHAs may continue to spend public housing funds on general building maintenance and operations during the SAC application review process
- **PHA cannot spend Public Housing Funds at a property after the DOT is released**
- For more details see [Repositioning and Public Housing funds FAQ](#)

Asset Repositioning Fee (ARF)

If there are occupied units, PHAs automatically receive ARF based (the first moveout after) on the planned start of relocations identified in the “days to relocation” field in section 5 of the DDA application. Must be at least 90-days unless all units are vacant

Must request FO update this field in DDA if plans are delayed

ARF formula different for demo vs. dispo

ARF is an element of the Operating Fund formula, and therefore is part of the calculation that derives Operating Subsidy eligibility

PHA must work with FO to ensure MicroStrategy Report and HUD-52723 is accurate

DDTF/ARF Summary:

<https://www.hud.gov/sites/dfiles/PIH/documents/DDTF>

Asset Repositioning Fee (ARF) Notice: PIH Notice 2021-37

<https://www.hud.gov/sites/dfiles/PIH/documents/PIH2021-37>



Demolition/Disposition Transitional Funding

DDTF is add-on of new capital dollars after S18 demo/dispo

PHAs automatically receive DDTF for units in RMI status in the funding year (after June 30th) following the change in status as RMI in IMS/PIC

DDTF can be used for any eligible Capital Fund purpose. See 24 CFR 905.400

DDTF continues for up to five years at amounts equivalent to their Capital Funds for units demo/dispo'd

DDTF/ARF Summary: <https://www.hud.gov/sites/dfiles/PIH/documents/DDTF>





Keep HUD Informed

- FO approval required to change start of relocation if delayed. Important for Operating Fund accuracy!
- Environmental Review updates. If plans change to the extent that the future use is substantially different from the project scope reflected in the ER, PHA must inform the Responsibility Entity (RE) (part 58) or HUD (part 50) and permit the RE or HUD to re-evaluate the ER.
- SAC approval for technical changes (i.e., name of acquiring entity, ground lease term). Not required, but SAC will issue new letter, if requested by PHA, Field Counsel to ensure the record is accurate.
- HUD approval for changes or releases to Use Agreement (that is recorded after dispo to ensure CPB). Request through FO.

HUD ~~Amendments~~ Approval, IF NEEDED!

- SAC approval required for material changes (after initial approval, but prior to DOT release/removal from inventory)
 - change to the method of disposition (i.e., public bid sale to a negotiated sale)
 - change to commensurate public benefit justifying a below FMV disposition
 - change to redevelopment plans (i.e., unit mix from MF PH to PBV that would change in TPV classification)
 - public bid sales where the offer is less than 80 percent of the appraisal submitted in the SAC application
- No HUD Approval necessary to change:
 - Use of proceeds, but use must comply 24 CFR part 970 and PIH Notice 2020-23
 - Change in other milestones in timetable (Section 5 of DDA)
 - Provided changes comply with 970.21 (but keep FO informed!)
 - EXCEPT: Change in start of relocation in timetable (Section 5 of DDA)
 - Note any change to start date of relocation (which may have funding implications) requires FO approval



Closeout Planning (if applicable)

- Start planning for PH Closeout (if applicable), even before removing last of PH units from inventory to plan for use of remaining funds, ensure sufficient funds will remain for closeout activities
- Closeout required by certain SAC approvals (i.e., 50 and under Section 18 or SVC)
- PHA may also closeout through Consolidation/Voluntary Transfer (see PIH Notice 2014-24) or ACC Termination (see PIH Notice 2019-13). Contact your Field Office



For more details see the [Public Housing Program Closeout](#) page at www.hud.gov/repositioning

Resources

Repositioning website www.hud.gov/repositioning

SAC's website www.hud.gov/sac

Section 18 Application Checklist (Exhibit C Order of Operations includes post-approval steps)

<https://www.hud.gov/sites/dfiles/PIH/documents/S18%20Checklist%2010-1-21%20%281%29.pdf>

Post-Closing Asset Repositioning Videos (for operating PBV projects post-closing) [PHA Asset Repositioning Post-Closing How-To Videos - HUD Exchange](#)

HCV Funding Notice: PIH Notice 2022-14

<https://www.hud.gov/sites/dfiles/PIH/documents/PIH2022-14.pdf>



Questions?



Appendix



Energy Performance Contracts (EPC)



- **Demolition.** All EPC debt must be paid prior to SAC Approval
- **Disposition.** Best practice is to pay EPC debt prior to SAC Approval. PHA may pay EPC debt after SAC approval if approved by the HUD Field Office, Energy Branch, and SAC. As part of SAC application, PHA must submit a proposal that document impact to EPC, availability of funds, and planned payment timeline
 - **EPC debt paid after SAC approval, either in advance of closing or at closing.** PHA makes required EPC debt prepayment in advance of or at disposition/closing date (depending, using Op Funds or Op Reserves or disposition proceeds)



- FO/Field Counsel will not release Declaration of Trust (DOT) or allow dispo to occur until EPC payment is made
- PHA must return and submit a full complete application to Energy Branch, at least 60 business days before disposition/closing date. See:
 - https://www.hud.gov/sites/dfiles/PIH/documents/RAD_EPC_FAQs.pdf
 - https://www.hud.gov/sites/dfiles/PIH/documents/EPC_and_SAC

Resolution of EPC--Disposition

- **No EPC Repayment Required.** Energy Branch determination that units do NOT meet EPC program requirement of 5% change of units in an EPC and the 10% change in EPC Contract Costs and EPC Savings;
- **EPC debt paid before SAC approval.**
 - PHA submits complete proposal to Energy Branch. Energy Branch issues approval.
 - PHA makes payment, submits documentation to FO. FO reviews and accepts it.
 - FO signs SAC FO Certification
- **EPC debt paid after SAC approval, either in advance of closing or at closing.** PHA makes required EPC debt prepayment in advance of or at disposition/closing date (depending, using Op Funds or Op Reserves or disposition proceeds)
 - PHA proposal must document impact to EPC, availability of funds, and planned payment timeline
 - FO and Energy Branch consult and agree on proposal
 - FO signs SAC FO Certification
- **If EPC debt not paid prior to SAC Approval**
 - FO/Field Counsel will not release Declaration of Trust (DOT) or allow dispo to occur until EPC payment is made (*get copy of payment confirmation that lender received amount in revised EPC letter*)
 - PHA must return and submit a full complete application to Energy Branch, at least 60 business days before disposition/closing date



Community Supportive Services (CSS)

- Should be resolved prior to SAC approval. Contact CSS Program Manager early! Refer to CSS Repositioning matrix (*see resources*)
- Family Self Sufficiency (FSS). As long as the participant will remain in HUD-assisted housing (HCV—PBV or tenant-based), PHA/owner entity is **REQUIRED** to continue to serve the participant
- ROSS and Jobs Plus. Demolition or disposition action may make HA out of compliance with its Grant Agreement. A repayment of grant funds to HUD or recapture of the grant may be required. HA should not move forward with removing the units from the public housing inventory until it has consulted with its CSS Program Manager



IF Changes are needed in the Approval Letter:

Change	Who does PHA need to tell?	When to tell?	HUD Guidance
Technical Changes	SAC	Prior to demo or DOT release	PIH Notice 2021-07
Material Changes	SAC	Prior to demo or DOT release	PIH Notice 2021-07
Redevelopment plans that would impact TPV classification	SAC	Prior to demo or DOT release Prior to applying for TPVs and starting relocation	PIH Notice 2022-14
Change in Project Scope	Responsible Entity (Part 58) or HUD (Part 50)	Prior to demo or DOT release	PIH Notice 2016-22
Change in start of relocation in timetable (Section 5 of DDA)	FO	“Days of Relocation” Field in DDA	PIH Notice 2021-37
Change in other milestones in timetable (Section 5 of DDA)	N/A	No formal HUD approval required, but keep FO informed	PIH Notice 2021-07
Relocation	N/A	No formal HUD approval required, but keep FO informed	24 CFR 970.21
Change in Use of proceeds	N/A	No formal HUD approval required, but keep FO informed	PIH Notice 2020-23
Change in or request that HUD release a Use Agreement (recorded after DOT release to ensure CPB)	FO	As soon as possible, prior to actually changing the required use	N/A



Impacts of SAC approval (Section 18)

Impact	What Happens	Triggering Event
Operating Funds	Asset Repositioning Fees (ARF)	“Days of Relocation” Field in DDA
Capital Funds	Demolition Disposition Transition Funds (DDTF)	Removal of units—RMI status
Faircloth	Increased capacity to develop more PH units, including Faircloth to RAD	Removal of units—RMI status
Eligibility to Apply for TPVs	PHA must submit TPV application to FO	SAC approval
REAC Inspections	REAC stops inspecting units	Removal of units—RMI status
Resident Status	Residents are put in “EOP” status in PIC if relocated to HCV in 50058 (PBV or tenant-based) or non-PH units. Residents retain PH status if relocated to other PH units	Residents provided comparable housing and “relocated” (could be in existing units)



Options for Property after SAC Approval

Status of Units in PIC	REAC Inspections?	Spend PH funds?	Re-occupy Units at Turnover?
Demo-Dispo Proposed (Application under review by SAC)	Yes	Yes*	Generally, no, especially if units are uninhabitable. See 24 CFR 970.25 and PIH Notice 2021-07 However, PHA may re-occupy for community housing needs, reasons consistent with its PHA Plan.
Demo-Dispo Approved	Yes	Yes *	Same as above
Removed from Inventory (RMI)	No	No	N/A

