



Public Housing Repositioning Wednesday Webinar Series: Below Fair Market Value (FMV) Dispositions—Use Agreements

April 24, 2024

Check out Previous Wednesday Webinars

27 Webinars on all things Repositioning

Highlighted Webinars:	Date:
<u>You Have SAC Approval: What Now?</u>	September 22, 2022
<u>Commensurate Public Benefit—Selling Public Housing Property at Below FMV</u>	December 14, 2022

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



Presenters

- Jane Hornstein, Special Applications Center (SAC)
- James Isaacs (SAC)
- Katie Stuckemeyer (SAC)
- Kathy Szybist (SAC)

Why are we here?

The goal of this webinar is to explain Use Agreement requirements that SAC may impose when it approves a below Fair Market Value (FMV) disposition based on a “commensurate public benefit”



Commensurate Public Benefit (CPB)

- A PHA may dispose PH Real Property at less than Fair Market Value (FMV) if there is a “**commensurate public benefit (CPB)**” to the community, the PHA, or the federal government. 24 CFR 970.19(a)
- Commensurate = Corresponding in amount, magnitude, or degree; Proportionate to the appraised of the Property



Commensurate Public Benefit: Examples

- **Affordable Housing.** HUD will typically find CPB exists if a property will be redeveloped (or maintained) as housing that serves families at or below eighty percent (80%) of area median income (AMI). PIH Notice 2021-07.



- **Non-Dwelling Services for Low-Income Families.** HUD may find that CPB exists if the property will be redeveloped (or maintained) as non-dwelling property that serves families at or below 80% of AMI



Use Agreements typically required CPB compliance

Form & Term of Use Agreement (UA)

Mixed-Finance PH

- Declaration of Restrictive Covenants (DORC), [HUD-52190](#)
- Requires MF PH Units be operated as PH for 40-years if Cap Funds used

RAD/Section Blends

- RAD/S18 Blend Rider, [HUD 5900](#)
- Requires Section 18 units be operated as project-based (PB) units for 40-years

Faircloth to RAD

- Initially, Declaration of Restrictive Covenants (DORC), [HUD-52190](#)
- DORC released at RAD closing and replaced with RAD Use Agreement

Affordable Rental Housing

- No form—depends on housing and terms of SAC approval
- PHA drafts (or requests sample template from FO/Field Counsel)
- FO approves
- Generally 30-years
- PBV HAP not sufficient
- LIHTC LURA acceptable if approved by FO/Field Counsel

Components of a Typical Use Agreement (UA)

- Ensures property is used for approved CPB (i.e., affordable housing)
- Recorded in First Priority Position
 - Stand-alone agreement; or
 - Part of Ground Lease (UA must survive if Ground Lease terminates)
- HUD, PHA, and Acquiring Entity are parties
- Binding upon successors and assigns
- PHA responsible for monitoring UA
- PHA retains records and annually reports to its board of directors on UA compliance
- Written HUD approval required for certain actions

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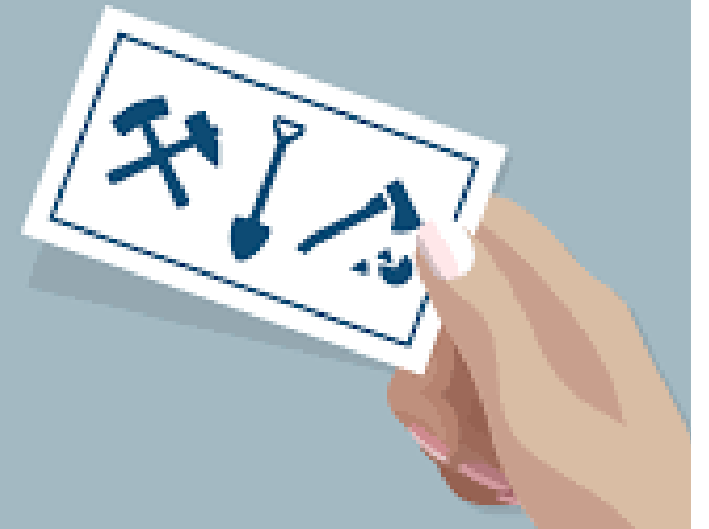
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PBV HAP Contract & Use Agreements

- **SAC's approval does NOT constitute PBV approval**
- If PHA plans to attach PBV assistance to the units, PHA and new owner enter a PBV HAP for the units
- SAC Use Agreement not required to reflect PBV use, only affordable housing to families below 80% AMI typically for a minimum of 30 Years

Project-Based Voucher



Written HUD Approval required once UA is in place:

Convey	VOLUNTARILY—convey assign, transfer, lease, sublease, or otherwise dispose of the property
Mortgage, pledge, or encumber	VOLUNTARILY—mortgage, pledge, or encumber the property
Demolish	an existing structure or construct a new structure
Amend or release	the Use Agreement

Use Agreements (UA)-Responsibilities

PHA	SAC	HUD PH FO	HUD Field Counsel	Office of Recapitalization
<ul style="list-style-type: none">• Proposes form of UA• Submits draft UA to FO with DOT release request• Ensures UA is executed and recorded• Provides a copy of recorded UA to FO• Monitors UA through term	<ul style="list-style-type: none">• Reviews and Approves proposed CPB justifying a below FMV disposition• Determines if UA is required, and required length• Drafts Approval letter with Use Agreement requirements	<ul style="list-style-type: none">• Approves form of UA, requesting Field Counsels assistance, if necessary• Does not execute DOT release until it approves UA• Keeps record of recorded UA (uploads into IMS/PIC, HIP, or other data source)	<ul style="list-style-type: none">• Assists FO in reviewing draft UA submitted by PHA• Provides PHA technical assistance, including model forms or samples of UA	<ul style="list-style-type: none">• Requires RAD/Rider is recorded at RAD closing if S18 units are part of a blend



Other Considerations

Quality

Owner must ensure quality of units during Use Agreement term. Capital needs must be addressed. Units must be decent, safe, sanitary.
PHA responsible to monitor and enforce

Affordability

If units are not LIHTC or PBV, and tenants are not using S8 HCV tenant-based assistance, rents must be kept affordable to families (generally not more than 30% of 80% of AMI) during Use Agreement term

Ground Leases and Use Restrictions

- If disposition is a Ground Lease, Use Agreement may be:
 - Stand-alone document (recorded before Ground Lease); or
 - Included in Ground Lease, provided use restrictions control over (conflicting) provisions
- Use restrictions must survive if Ground Lease terminates (and PHA obtains full property interests)
- HUD may require Declaration of Trust (DOT) to remain (not release it) to ensure HUD's real property interest



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Resources

SAC

[SAC website](#)

SACTA@hud.gov

Public Housing Mixed-Finance

[HUD-52190 \(DOT/DORC\)](#)

our@hud.gov

Repositioning Public Housing

[Repositioning website](#)

Rental Assistance Demonstration (RAD)

[RAD website](#)

[RAD Conversions of Mixed-Finance Units](#)

RAD@hud.gov

RAD/Section 18 Blends

[RAD/Section 18 Blends website](#)

[HUD 5900 \(RAD/S18 Blends Rider\)](#)

Questions?

