

On March 22, 2018, HUD issued PIH 2018-04, “Demolition and/or disposition of public housing property, eligibility for tenant-protection vouchers, and associated requirements” (the “Notice”). The Notice makes significant policy changes to the requirements for HUD approval of applications to demolish and/or dispose of public housing property under Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) and related Tenant Protection Voucher (“TPV”) eligibility for such actions which were previously governed by PIH Notice 2012-7.

Disposition:

- While “obsolescence” is still a justification which may be used by PHAs to obtain disposition approval from HUD, the obsolescence test is somewhat relaxed and HUD will be more flexible in allowing other justification under which a PHA may obtain disposition approval. However, demonstrating obsolescence is still a requirement in order to be eligible for TPVs for one-hundred percent (100%) of the occupied units, except as otherwise noted below.
- HUD will still allow for the disposition of units when based on either: (1) health or safety of the residents that the PHA cannot cure or mitigate in a cost-effective manner, or (2) infeasibility demonstrated by a lack of demand for the units. (*See* PIH 2018-04, Section 3(A)(1)).
- HUD will now also approve disposition applications if a PHA can demonstrate that on- or off-site development of low-income housing will result in improved efficiency or effectiveness. In evaluating efficiency, HUD will consider a variety of factors that would make the rehabilitation or replacement of low-income housing units preferable including energy efficiency, unit configuration, location, access to transportation/jobs/schools, and the furthering of minority or economic de-concentration. To be approved, the PHA must plan to acquire, develop, or rehabilitate off-site public housing units, off-site project-based voucher units, or off-site project based rental assistance (“PBRA”) units. It will not include the use of tenant-based Section 8 Housing Choice Vouchers. TPV eligibility for successful disposition applications submitted under this section will be limited to 25% of the occupied units at the project. (*See* PIH 2018-04, Section 3(A)(2)). Although the Notice makes no mention of one-for-one replacement, HUD has verbally acknowledged

that it will not require on- or off-site one-for-one replacement for dispositions processed under this section. (*See* PIH 2018-04, Section 3(A)(2) and Section 3(A)(3)(d)).

- If a PHA converts at least seventy-five percent (75%) of a project's public housing units through RAD, HUD's Special Applications Center will allow the PHA to dispose of the remaining units (up to 25%) under a Section 18 disposition application and replace them with project-based Tenant Protection Vouchers as long as the project is not also receiving nine percent (9%) low income housing tax credits. In order to qualify, the project-based Section 8 units (both RAD and non-RAD) must be either newly constructed or substantially rehabilitated. (*See* PIH 2018-04, Section 3(A)(3)(c)).
- If a PHA owns and operates fewer than fifty (50) units under its ACC and disposition will result in the PHA closing out its Section 9 public housing program, HUD will approve a PHA's disposition application. The PHA will be eligible for TPVs for all occupied units. (*See* PIH 2018-04, Section 3(A)(3)(b)).
- Scattered-site units consisting of units in non-contiguous buildings with four or fewer total units, are now also eligible for disposition approval and replacement with TPVs for all occupied units. (*See* PIH 2018-04, Section 3(A)(3)(e)).

Demolition:

- In order for SAC to approve a demolition application, PHAs must still show that a project has satisfied the obsolescence test and that rehabilitation costs are at least 62.5% of total development costs for elevator structures or 57.14% of total development costs for all other structures. (*See* PIH 2018-04, Section 4(A)(1)).
- HUD has expanded the items that may be included in the scope of work that will be considered in determining obsolescence. (*See* PIH 2018-04, Section 4(A)(1)).
 - PHAs may now include compliance with local code requirements (i.e., fire codes or requirements for natural disasters) and building code requirements if such requirements would be triggered by the rehabilitation/repair.
 - PHAs may now include underground utilities (e.g., sewer, water, gas, electric) in the scope of work that HUD will consider, regardless of the distance of such

utilities from the buildings, as long as the PHA owns the utility and is able to evidence the need for replacement.

- PHAs may now include accessibility improvements for individuals with mobility, vision, hearing or other impairments that are consistent with standards, regulations, and other requirements under Section 504 of the Rehabilitation Act of 1973 (including the Uniform Federal Accessibility Standards), the Fair Housing Act, the Americans with Disabilities Act, other applicable federal authorities, and accessibility requirements in remedial agreements or orders, as well as any state or local requirements that exceed federal baseline requirements. Previously, if a PHA included accessibility in the scope of work, the PHA was required to compare such unit counts with the requirement for 5% of total housing stock under Section 504 of the Rehabilitation Act of 1973.
- PHAs may now include imminent health and/or safety issues in the scope of work, even if such costs are otherwise not eligible, as long as the PHA is able to provide supporting documentation for an independent party.
- Mitigation costs for environmental issues, asbestos, and lead-based paint may be included in the scope of work as long as such costs are supported.
- In determining the cost-estimates for eligible scope of work items, HUD has clarified that PHAs must use current estimated costs and may not adjust cost-estimates to account for additional costs attributable to inflation or cost escalation. (*See* PIH 2018-04, Section 4(A)(1)).
- While HUD previously included a list of acceptable soft cost percentages that qualified for a safe harbor for public housing rehabilitation, HUD is now establishing maximum percentages (based on hard construction) that it will consider as soft costs. For example, while the safe harbor used to allow for a construction contingency of five to ten percent (5%-10%), HUD now caps the percentage at 7.5%, and whereas the safe harbor previously allowed for architectural/engineer's design and construction monitoring fees to range from four to seven percent (4%-7%), HUD now caps this number at 5.5%. However, HUD will now also allow up to ten percent of the cost of hard construction for

profit and overhead fees for specialty sub-contractors (e.g., HVAC, electrical, plumbing, elevator) and will allow up to five percent for general condition fees (e.g., permits, insurance, bonds). The percentage allowed for PHA administrative costs remains unchanged at two percent (2%). (*See* PIH 2018-04, Section 4(A)(1)).

- HUD will now allow PHAs to demonstrate obsolescence through use of location and other factors that impact the marketability, usefulness, or management of the units. The cost-test for obsolescence based on location includes the PHA's cost to cure the obsolescence (e.g., buffering nearby industrial or commercial development, mitigating environmental conditions) and whether those costs exceed applicable total development cost percentages. The cost-test for obsolescence based on other factors includes the PHA's costs to cure the cause and whether these costs exceed applicable total development cost percentages. (*See* PIH 2018-04, Section 4(A)(2)-(3)a).

Application Requirements:

- HUD will allow PHAs to submit SAC applications with phased or staggered timelines which will allow units in later phases to remain eligible for operating subsidy for a longer period. Although a SAC application will be required in IMS/PIC for each phase, with different relocation start timelines, HUD will allow the same supporting documentation to be used for all phases (e.g., board resolution, resident consultation, government consultation). (*See* PIH 2018-04, Section 2(G)).
- If a PHA submits a SAC application that is substantially incomplete or deficient (e.g., missing required supporting documentation), PHAs were previously required to submit a new application with a new application number in IMS/PIC for the same demolition or disposition. Under PIH 2018-04, HUD has clarified this process. Now, under the Notice, if a PHA submits an application that is substantially incomplete or deficient, SAC will return the application to the PHA informing the PHA of the deficiencies and will allow PHAs to re-submit their SAC application as long as the PHA consults with residents and resident groups and secures a new board resolution on any material changes from the original submission. (*See* PIH 2018-04, Section 2(A)).

- After a PHA's application for demolition or disposition has been approved, the PHA may amend its demolition or disposition plans from what was submitted in the initial application. However, if a PHA's plan changes on material terms, SAC approval will be required. The Notice defines "material terms" as including the following: (i) method of disposition; (ii) public bid sale where offer is less than 80% of the fair market value appraisal submitted in the SAC application (note, HUD will consider updated appraisals); (iii) terms of commensurate public benefit disposition; and (iv) use of proceeds. When this happens, PHAs must request amendments by emailing SACTA@hud.gov. (See PIH 2018-04, Section 2(H)).

In addition to the above changes, the Notice also outlines the application process that PHAs must follow in order to receive TPVs and details other requirements that PHAs must follow, including reporting requirements, civil rights requirements, and relocation requirements that PHAs must follow if any residents are to be relocated.