

PHA Instructions for Requesting Early Removal of Public Housing Units

Section 1.4.A.9 of PIH Notice 2012-32 (HA) REV-2) (RAD Notice) states: “Unless approved in writing by HUD, a Public Housing Authority (PHA) may only demolish and/or dispose of units following the closing of construction financing for the Covered Project.” This document provides information on a PHA will need to provide to HUD in order to consider a request for demolition or disposition prior to construction financing closing for properties converting under Rental Assistance Demonstration (RAD), as well as the standards HUD will apply in reviewing such requests.

Standard for approval

HUD will only approve requests for demolition or disposition for properties converting under RAD prior to the construction finance closing if, in considering the totality of circumstances, HUD determines that:

- 1) All residents are protected;
- 2) Failure to approve the request would create an unreasonable burden on the residents and/or the project;
- 3) The request is consistent with the goals of preserving, enhancing or expanding the supply of affordable housing; and
- 4) There is a high probability of successful and timely completion of the approved replacement housing development plan.

Submission and Factors to Consider in the Submission

To request to demolish or dispose of units prior to the construction finance closing for the Covered Project, a PHA must submit the items listed below. HUD will review the items submitted to determine whether or not the situation sufficiently warrants approval for demolition or disposition prior to the construction finance closing pursuant to the standards described above. In making this determination, HUD may consider the factors described below and/or other factors relevant to the standards.

- 1) The description of the plans for demolition and redevelopment, including timelines. The PHA must describe the proposed plans as a foundation for HUD’s evaluation and understanding of the request.
- 2) PIC Removal. The PHA must have submitted a PIC removal application that has been determined acceptable by PIH.
- 3) The explanation justifying why the PHA is seeking demolition prior to the construction finance closing. The PHA must explain why it is seeking the request and the implications of the request in light of RAD requirements (e.g., preservation of assisted units and protection of the residents). A strong explanation or justification alone is not sufficient to meet HUD’s standards for granting approval. HUD may agree with the PHA’s justification but nevertheless determine that the PHA does not meet the required standards. In reviewing the PHA’s explanation of its request, HUD may consider:
 - a) *Physical considerations.* Demolition or disposition in stages is infeasible or impractical based on the layout of the site, the current physical structure(s), the proposed

- replacement structure(s), physical access to the site, utility access to the site, utility integration of the site or other physical factors.
- b) *Safety and security considerations.* Staged demolition or disposition would create an unhealthy or hazardous living environment for residents remaining on site.
 - c) *Financial and logistical considerations.* Staged demolition or disposition would be significantly more costly, take significantly more time and/or would be significantly more challenging than demolition or disposition pursuant to this approval.
 - d) *Pre-existing approval to remove units from the public housing inventory.* Preservation of at-risk units would result because the PHA would decline to exercise a pre-existing demolition/disposition authority and elect to participate in RAD (and replace the units) instead. Specifically, if a PHA has pre-existing approval to remove units from the public housing inventory (for example, under Section 18 of the United States Housing Act of 1937 (Section 18), Choice Neighborhoods Initiative (CNI), or RAD de minimis disposition authority from an earlier conversion), the PHA could proceed to demolish the units under that authority and the units would be lost from the affordable housing inventory. In such a situation, authority to demolish or dispose prior to the construction finance closing would result in preserving RAD eligibility, preserving units that would otherwise be lost from the affordable housing inventory, and the PHA declining its pre-existing demolition approval under other authorities.
 - e) *Binding order from a court of competent jurisdiction, including eminent domain or consent decree.* In light of a binding order to demolish or dispose of the units, authorizing demolition or disposition prior to the construction finance closing would result in the conversion of the units under RAD and preserve the PHA's ability to replace them.
 - f) *Exigency.* For example, the demolition or disposition action is necessary in order to meet a placed in service deadline, particularly where the tight schedule was caused by factors beyond the PHA's control.
 - g) *Other local factors.*
- 4) Occupancy Report. The PHA must identify whether the property has been occupied since the time of the first RAD application resident meeting. For all residents in occupancy at the time of the first resident meeting and at the time of CHAP or that have since moved in, the PHA must provide an updated status of the household's occupancy (e.g. in residence at the Converting Project, transferred to other public housing, moved out, evicted, received HCV from waiting list, or other with explanation).
- 5) The plan for tracking and maintaining the residents' Right to Return. In reviewing the PHA's plan to safeguard residents' Right to Return, HUD will evaluate whether the plan is reasonable and in sufficient detail to maximize the probability of the plan's successful implementation. In addition, HUD will evaluate whether the strategy for tracking residents and maintaining data about residents is well organized and backed by adequate resources. The quality of the resident data submitted with the request is relevant information for analysis of this factor, demonstrating the PHA's current methodology for tracking the residents.
- 6) The relocation plan. If the property has occupants, the PHA must provide a written relocation plan as part of its request to demolish or dispose of units prior to the construction finance closing. Because the units are being demolished pursuant to RAD authority and the

project will include demolition, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) is applicable in addition to RAD relocation requirements. In reviewing the relocation plan, HUD will consider whether:

- a) The relocation plan is reasonable, thorough, well organized and well thought out. The PHA must describe the actions it has taken or plans to take to minimize any negative impact on residents. The plan must specify eligibility dates and how the sequence of events proposed interacts with relocation thresholds (e.g., the date of initiation of negotiations, or ION date).
 - b) The relocation plan meets the RAD requirements, provides for payments and assistance equal to or greater than those required under the URA and meets any other requirements associated with the anticipated project funding.
 - c) The supply of relocation housing resources in the community is adequate to accommodate the need.
 - d) The budget associated with the relocation plan is adequate to implement the plan.
 - e) The PHA has adequate resources to provide relocation assistance for the full period of redevelopment, taking into account the possibility of delays in the redevelopment.
- 7) The replacement housing plan. HUD must receive adequate assurance that the planned projects will be completed, including details on the replacement housing plan and on the development team's capacity. HUD must receive enough information which will allow HUD to assess the viability and financial feasibility of the plan. In particular, HUD will consider the following questions:
- a) Has the PHA identified the participating parties (e.g., development team) with a description of the activities to be undertaken by each of the participating parties and the PHA? What are the legal and business relationships between the PHA and each of the participating parties? How has the PHA, the Project Owner(s) and/or their development team demonstrated capacity to execute the replacement strategy? Does that capacity include experience implementing similar transactions, the financial capacity to sustain the redevelopment effort and the financial capacity to secure the necessary capital investment? If the capacity is secured through partnerships or consulting engagements, is the necessary capacity under contract? Is the capacity dependent on one or two individuals, or is the strength of the team broad-based within the participating organizations? If dependent on a discrete number of individuals, is there a backup strategy?
 - b) Does the PHA and its development team have a detailed plan for future replacement housing? What is the team's approach to implementing the replacement housing plans and are the plans reasonable? What evidence is there that the team's strategy has strong likelihood of success? What are the proposed sources and uses for financing the replacement housing? What sources of financing for the replacement housing plan are committed and what sources are contingent? How likely is the development team to be able to secure the as-yet-uncommitted sources? Are necessary subsidies and gap financing sources available and likely?
 - c) Does the PHA, the Project Owner or another member of the development team have site control, zoning approval and all discretionary approvals of any kind necessary to permit construction of the replacement units?

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- d) Are there any impediments that would prevent the plan from moving forward? Do the PHA and/or Project Owner(s) have a contingency plan for the replacement units in the event that the primary replacement strategy becomes infeasible?
- e) Do the PHA and/or Project Owner(s) have a contingency plan for the housing of the residents in the event that the primary replacement strategy becomes infeasible?