

# FLASH ALERT



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## Public Housing ACC Termination & PHA Close Out

[PIH Notice 2019-13](#), "Notice", outlines requirements public housing agencies (PHAs) must complete when proposing to remove their remaining public housing units from the public housing program and requirements related to the termination of the public housing Annual Contribution Contract (ACC). ACC termination follows the removal of all public housing units and other public housing property from the public housing inventory. ACC termination is also known as PHA closeout.

HUD will terminate its public housing ACC with a PHA only after the PHA removes all units and other real and personal property from its public housing ACC through one or more of the following options:

- ▶ Demolition and Disposition under Section 18
- ▶ Voluntary Conversion under Section 22
- ▶ Homeownership under Section 32
- ▶ Required Conversion under Section 33
- ▶ Choice Neighborhoods Demolitions under Section 24
- ▶ Retentions under 2 CFR 200.311 and HUD guidance

- ▶ Personal Property Dispositions (i.e., equipment and supplies) as part of the unit removal or under 2 CFR 200.313-314 and HUD guidance
- ▶ Eminent Domain under PIH Notice 2012-8
- ▶ Rental Assistance Demonstration Program (RAD) under the Consolidated and Continuing Appropriations Act of 2012

The process of termination begins when the PHA submits its IMS/PIC removal application for the last units in its public housing program. As an attachment to that IMS/PIC removal application, the PHA must submit form HUD-5837, Notification of Public Housing Closeout or Future Development. This requirement applies to all applications submitted to HUD on or after April 20, 2018. This form notifies HUD whether the PHA intends to closeout or pursue any unused development authority under "Faircloth".

In submitting form HUD-5837, the PHA indicates its intention to closeout under PIH Notice 2019-13 or under PIH Notice 2014-24. The second option, "ACC Termination" would apply to PIH Notice 2019-13.

Option	Requirements	Pros	Cons
<b>Develop New PH Units</b>	<ul style="list-style-type: none"> <li>▶ Development Proposal approved by HUD under 24 CFR 905</li> <li>▶ PH units may be developed conventional or mixed-finance</li> <li>▶ Restricted by Faircloth limit</li> </ul>	<ul style="list-style-type: none"> <li>▶ New PH units could later be repositioned through RAD, homeownership (Sec 32), or disposition</li> <li>▶ Eligible use of remaining PH program resources, including any DDTF/ARF funds</li> </ul>	<ul style="list-style-type: none"> <li>▶ Not available if repositioning authority requires closeout</li> <li>▶ Restricted by Faircloth limit</li> <li>▶ New units start with a new DOFA date with lower PH formula funds</li> </ul>
<b>ACC Termination</b>	<ul style="list-style-type: none"> <li>▶ Closeout activities described at Section 6 of PIH Notice 2019-3</li> </ul>	<ul style="list-style-type: none"> <li>▶ Requires no collaboration with other PHAs</li> </ul>	<ul style="list-style-type: none"> <li>▶ HUD approval to sell or retain non-dwelling/personal property</li> <li>▶ Requires PHA to closeout CFP and Operating grants</li> <li>▶ Return unused PH funds to HUD</li> <li>▶ Faircloth limits lost</li> <li>▶ Loss of future DDTF/ARF if ACC terminates prior to fund distribution</li> </ul>
<b>PHA Full Transfer</b>	<ul style="list-style-type: none"> <li>▶ Complete transfer of PH assets/liabilities to receiving PHA</li> <li>▶ Both PHAs must have a PH program</li> <li>▶ Requirements described in PIH Notice 2014-24</li> </ul>	<ul style="list-style-type: none"> <li>▶ Preserves PH resources (equipment, non-dwelling property, PH funds) and Faircloth units with nothing returned to HUD</li> <li>▶ Preserves potential future funding (DDTF and ARF) to receiving PHA</li> <li>▶ Transfer can occur even after all PH units are removed</li> </ul>	<ul style="list-style-type: none"> <li>▶ Prior PHA governance has no control over PH resources after transfer</li> <li>▶ Requires collaboration between divesting and receiving PHAs</li> <li>▶ May require transfer of liabilities such as pensions and use agreements to the receiving PHA</li> </ul>
<b>PHA Consolidation</b>	<ul style="list-style-type: none"> <li>▶ Complete transfer of PH assets/liabilities to newly created PHA</li> <li>▶ Requirements described in PIH Notice 2014-24</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as PHA transfers above</li> <li>▶ Creates a new PHA which did not formerly operate PH (e.g., State Housing Finance Agencies)</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as PHA transfers above</li> </ul>

PHAs that choose the second option to terminate their ACC must submit a legal opinion and a Board resolution certifying their compliance with requirements stated in the Notice as summarized below.

### Disposition of all Non-dwelling Real Property

Real property acquired, developed, modernized, operated or maintained with public housing funds is subject to public housing requirements and the ACC. PHAs develop a strategy for the future use (or disposition) of non-dwelling public housing property consistent with their PHA Plan to maximize benefits to the community.

### Disposition of Personal Property

Original or replacement equipment acquired under a federal award is no longer needed for the original project or program or PHA, obtain "disposition instructions" from the federal awarding agency (e.g., HUD). 2 CFR 200.314 states that if a residual inventory of unused supplies exceeding \$5,000 in total aggregate value remains upon termination or completion of the project or program and the supplies are not needed for any other federal award, the non-federal entity (PHA) must retain the supplies for use on other federal grant program activities or sell them.

- ▶ If a PHA intends to use personal property for other federally-supported activities or awards (e.g., Section 8 voucher or RAD), the PHA may retain such property without further obligation to HUD (regardless of the market value of such property).
- ▶ For items or equipment with a current per-unit market value of \$5,000 per item or less, the PHA may retain, sell or otherwise dispose without further obligation to HUD. See 2 CFR 200.313.
- ▶ Items or equipment with a current per-unit market value over \$5,000 per item, the PHA may retain, sell, or transfer, but HUD is entitled to compensation. If the equipment is sold, HUD may permit the PHA to deduct and retain from the federal share \$500 or ten percent of the proceeds, whichever is less, for "selling and handling expenses".
  - A PHA may request an exception to the compensation requirement to its Field Office. If HUD grants an exception to the compensation requirement, proceeds realized from the sale of equipment (in excess of funds retained for "selling and handling expenses") must be used for low income housing purposes or to benefit the residents assisted by the PHA in accordance with Section 9(k) of the 1937 Act.
- ▶ For supplies, if the total aggregate value of all unused supplies in the PHA's residual inventory is valued at \$5,000 or less, the PHA may retain, sell or otherwise dispose without any further obligation to HUD. See 2 CFR 200.314.
- ▶ For supplies with an aggregate value over \$5,000, the PHA may retain, sell, or transfer, but HUD must be compensated. Again, compensation is based on HUD's percentage of the original purchase cost with the same retention for "selling and handling expenses."

- A PHA may request an exception to the compensation requirement to its Field Office. If HUD grants an exception to the compensation requirement, proceeds realized from the sale of equipment (in excess of funds retained for "selling and handling expenses") must be used for low income housing purposes or to benefit the residents assisted by the PHA in accordance with Section 9(k) of the 1937 Act.

For intangible PHA personal property, the PHA may generally retain, sell, or transfer the property in the same way as equipment (see 2 CFR 200.315). However, for certain intangible property (e.g., debt notes), the PHA must follow terms of any associated imposed agreement.

The Field Office has discretion to require a PHA to submit a master list of all personal property and how it proposes to comply with the above requirements. Records for PHA personal property disposition are retained for three years after final disposition.

### Resolution of all Outstanding Legal Matters

Working with their counsel, HUD counsel and Field Office, PHAs must reasonably anticipate any outstanding litigation, claims, compliance reviews, monitoring reviews, PHA or MTW Plan reviews, audits (including General Accountability Office, Office of the Inspector General, and program audits), and/or fair housing and civil rights matters associated with their public housing program. Fair housing and civil rights matters may include charges, cause determinations, lawsuits, letters of findings, outstanding voluntary compliance agreements or consent decrees, and remedial orders or agreements with unfulfilled requirements. HUD determines when actions to resolve are completed. All outstanding matters must be resolved prior to ACC termination.

Closeout from the public housing program does not end a PHA's continuing obligations or legacy costs. Legacy costs include, but are not limited to, Pension Benefit Obligations (PBOs), Other Post-Employment Benefits (OPEBs), Compensated Absences, Termination Benefits, and Risk Financing (Liability Claims) that may not be currently reported in a PHA's financial statement and may be unfunded. Legacy costs remain with the PHA with no financial obligation or liability transferred to HUD.

Additionally, PHAs assess closeout impacts on cooperative agreements, contracts and associated obligations between the PHA and state and/or local municipalities. ACC termination may result in a material change or automatic termination of a government agreement.

### Resolution of Grants and Approvals

PHAs ensure all terms and conditions, obligations and repayment agreements required by HUD in connection with outstanding grants and public housing program approvals are satisfied prior to requesting ACC termination. PHAs identify all public housing grants and HUD approvals not closed out.

### Grant Period of Performance

The time during which a PHA may incur new obligations to carry out the work authorized by HUD under a federal award, including the Operating Fund and the Capital Fund. For Capital Fund grants, the period of performance ends at the Expenditure End Date (EED) (24 CFR 905.306(f)). For Operating Fund grants, the period of performance terminates at the end of the Funding Year that is twelve months after the later of: 1) the date of the removal of the last public housing unit from the ACC; or 2) if the PHA plans to develop additional public housing units, the date on which Asset Repositioning Fee (ARF) eligibility ends.

- ▶ Grant extensions must be approved by HUD. Grant extensions for Capital Fund awards require prior HUD approval and must comply with Section 9(j) of the 1937 Act and 24 CFR 905.306.

The PHA must comply with the closeout reporting requirements associated with a PHA's public housing programs. For Operating Funds, the PHA must submit all closeout reports and liquidate all obligations no later than 90 days after the end of the period of performance. To the extent the PHA cannot specifically identify the source of funds in the Operating Reserve, the Operating Reserve balance is considered Operating Funds.

- ▶ PHAs may request extensions. Field Offices have the authority to approve extension requests of up to nine months, approve a lesser duration, or deny the request.

The Capital Fund program includes submission deadlines and requirements unique to the Capital Fund program (cost certificate, an audit, if applicable, and a final Performance and Evaluation Report, as well as receipt of HUD approval of the cost certificate). Fiscal closeout for the Operating Fund requires PHA submission of an SF-425 and a final audit of the public housing program.

Certain repositioning authorities may result in eligibility for Demolition and Disposition Transitional Funding (DDTF) or Asset Repositioning Fees pursuant to 24 CFR 990.190(h) and PIH Notice 2017-22. These funds are additional grant funds. PHAs may only spend these funds on eligible program activities.

### Public Housing Audit

Pursuant to 2 CFR 200.501, PHAs that expend \$750,000 or more in federal funds during the PHA's fiscal year, must have an independent audit conducted no later than nine months following their fiscal year end date. Depending on the timing of the removals, there may be more than one audit between the removal of the last public housing unit and termination of the ACC. Field Offices review the audit results, work with the PHA to resolve any audit findings, and, if applicable, transmit approval of the cost certificate. Following ACC termination, no more audits are required for public housing purposes through the Fiscal Year End (FYE), but if a PHA has other HUD housing programs, including Section 8 or Multifamily programs, the PHA remains subject to any audit requirements of those programs.

### Reconciliation of Public Housing Funds

Any remaining public housing funds (e.g., Capital Funds, Operating Funds) must be promptly returned to HUD via wire transfer. If a PHA fails to return remaining public housing funds earned during the period of performance in accordance, then the requirements at 2 CFR 200.345 (collection of amounts due) apply, as well as any applicable debt collection statutes and regulations, including imposition of interest on uncollected amounts.

### Reconciliation of Program Income

Any remaining program income (e.g., rental income, non-rental income under) derived from the PHA's operation of its public housing program must be promptly returned to HUD via wire transfer. If a PHA fails to return remaining program income earned during the period of performance in accordance with 24 CFR 905.322 and 2 CFR 200.343, then the requirements at 2 CFR 200.345 (collection of amounts due) apply, as well as any applicable debt collection statutes and regulations, including imposition of interest on uncollected amounts.

### Reconciliation of Disposition Proceeds

Any remaining disposition proceeds derived from the sale of real property under Section 18 of the 1937 Act must either be promptly returned to HUD via wire transfer or approved by HUD for obligation/use for eligible uses (which may include Section 8 purposes). The Special Application Center (SAC) approves the use of disposition proceeds. As part of the closeout, PHAs confirm a valid and current HUD approval for all unexpended disposition proceeds and have a plan to use the proceeds in accordance with that approval. If a PHA's plans change, there must be a new approval from the SAC for the proposed new use of proceeds.

This Notice is very comprehensive and contains many details. We recommend that a PHA wishing to complete an ACC Termination read the complete Notice for additional requirements to complete this process.

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### ABOUT BDO PHA FINANCE

BDO PHA Finance, a division of BDO USA, LLP, provides accounting and management consulting services to Public Housing Authorities (PHAs) nationwide. We are proud to be making a difference for the housing authorities that serve communities throughout the United States.

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