



U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Special Attention of

Directors, Public Housing Hub Offices;
Directors, Public Housing Program Centers;
Director, Office of Field Operations;
Public Housing Agencies;
Regional Directors;
State/Area Coordinators;

Notice PIH 2005-2 (HA)

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Notices PIH 97-12 (HA), 98-24 (HA), 98-44 (HA),
99-21 (HA), 2000-20 (HA), 2001-17 (HA), 2002-12
(HA),

SUBJECT: REQUIREMENTS FOR DESIGNATION OF PUBLIC HOUSING PROJECTS

I. PURPOSE: This Notice reiterates the streamlined requirements for designating public housing projects for occupancy by elderly families only, disabled families only, or elderly and disabled families only. This Notice also includes the requirements and procedures for renewal of, or changes to, previously HUD approved designation plans.

II. STATUTORY REQUIREMENTS: A PHA must submit a designated plan for HUD's approval in order to designate a project for elderly families only or for persons with disabilities only in accordance with Section 7 of the U.S. Housing Act of 1937 (Section 7) which was amended by Section 10(a) of the Housing Opportunity Program Extension Act of 1996 (Section 10).

III. EFFECTIVE DATE: The provisions of the statute were effective on March 28, 1996. The provisions of this Notice supersede the regulatory requirements of 24 CFR 945, "Designated Housing – Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families" and therefore, are effective immediately. The following terms are defined in 24 CFR part 5, subpart D: *disabled family, elderly family, family, near-elderly family, and person with disabilities*. The term *mixed population development* is defined in 24 CFR part 960, subpart A. The term *accessible* is defined in 24 CFR part 8, subpart A. The term *consolidated plan* is defined in 24 CFR part 91, subpart A.

IV. NON-DISCRIMINATION REQUIREMENTS: Nothing in this Notice relieves a PHA from complying with the non-discrimination provisions of Federal civil rights laws, including but not limited to Section 504 of the Rehabilitation Act and its implementing regulation at 24 CFR Part 8, the Fair Housing Act and its implementing regulation at 24 CFR Part 100, and Titles II and III-of Americans With Disabilities Act and their implementing regulations at 28 CFR Parts 35 and 36.

V. INFORMATION COLLECTION REQUIREMENT: On December 23, 1996, a Notice of Proposed Information Collection was published in the Federal Register for public comment. The proposed information collection requirements contained in this Notice are being submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction-Act of

1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

VI. APPLICABILITY: This Notice and the requirements it describes apply only to projects (or portions of projects) operated by PHAs under the low-income public housing program.

VII. NO PLANS REQUIRED TO MAINTAIN MIXED POPULATION PROJECTS: Section 7 provides that PHAs may submit plans to formally designate housing for mixed populations of elderly families and persons with disabilities. However, HUD is not requiring PHAs to submit plans if they wish to continue administering their mixed population housing as housing for mixed populations of elderly families and persons with disabilities.

VIII. REQUIREMENTS FOR DESIGNATION OF PROJECTS: The format for submitting the plan is contained in Appendix A. Additional guidance is provided in the Public Housing Occupancy Guidebook available online at <http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>. The PHA must submit a plan for HUD approval that addresses and complies with the criteria described below:

- A. Justification for Designation. A PHA must establish that the designation of the project is necessary to achieve the housing goals for the jurisdiction under the Comprehensive Housing Affordability Strategy, part of a jurisdiction's Consolidated Plan, and to meet the housing needs of the low-income population of the jurisdiction.
- B. Project Description. A Plan must include a description of a project (or portion of a project) to be designated; the types of tenants for which the project is to be designated; any supportive services to be provided to tenants of the designated project (or portion); and how the design and related facilities (as such term is defined in Section 202 (d)(8) of the Housing Act of 1959 as such statute existed prior to October 1, 1991) of the project accommodate the special environmental needs of the intended occupants;
- C. Alternative Resource. A Plan must include a description of any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted pursuant to this section.
- D. No Eviction or Lease Termination Due to Designation. A PHA may not evict or terminate the lease of any tenant lawfully residing in a dwelling unit in public housing because of the designation.
- E. Voluntary Relocation Because of the Designation. A PHA must provide the following to persons and families who agree to be relocated in connection with a designation:
 - 1. A notice of the designation and an explanation of available relocation benefits, as soon as is practicable for the agency and the person or family.
 - 2. Access to comparable housing (including appropriate services and design features), which may include tenant-based rental assistance under the Housing Choice Voucher Program, at a rental rate paid by the tenant that is comparable to that applicable to the unit from which the person or family has vacated.
 - 3. Payment of actual, reasonable moving expenses.

- F. Inapplicability of Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970. Tenants may not be considered to be displaced for purposes of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970.¹ because of the designation of any existing project or building, or portion thereof, of public housing.
- G. Eligibility of near-Elderly Families If the housing agency determines there are insufficient numbers of elderly families to fill all the designated units, the housing agency may provide in the Plan that it will admit a near elderly family to a project (or portion of a project:) designated for occupancy by only elderly families.

IX. Duration of Plan: All designations are in effect for five years from the date of HUD's notification of approval of the Plan. A PHA may amend its Plan before the expiration of the five-year period by submitting a revised Plan to HUD. For revised Plans, the requirements stated in paragraph XI below apply regarding HUD's review and notification.

X. Renewal of Plan: Renewal of Plans beyond the five years will be granted in two-year increments.

A. Where the statutory requirements of the original plan are being met and there are no unanticipated adverse impacts on the housing resources for the groups not being served due to the designation, the PHA should submit a certification attesting to this and address the following:

1. Request the extension in writing, identifying the affected project(s) by name and number,
2. Specify the number of units and percentage(s) of the project being designated,
3. Specify the total number of units in the affected project(s).
4. Identify the population served in the designated units.

B. Where HUD has no information to challenge in a substantial manner the PHA's certification, the renewal will be granted. Where HUD has information available to challenge in a substantial manner the PHA's certification, HUD will review such information before a renewal is granted.

C. Where the statutory requirements are not being met by the designation, or if circumstances have changed, the PHA's request must also include any information needed to update the Plan for the renewal. (See the appendix for additional guidance).

D. If a PHA wishes to revise its Plan rather than just request renewal, it must follow the requirements described in Section VIII.

E. Where no renewal request is submitted, the designated project or portion of a project will convert to a mixed population development on the date of the expiration of the original approved plan.

¹ If a PHA wishes to offer relocation to members of the non-designated group, the PHA must offer relocation to all members of that group who are tenants of the designated project. The PHA should follow its lease provisions and consult the Public Housing Occupancy Guidebook.

XI. HUD Review of Plan

In accordance with Section 7, HUD must conduct a limited review of each designation plan to ensure that the plan is complete and complies with the requirements of Section 7.

A. The criteria used in determining if a plan complies are:

1. The Plan is complete in significant matters required under the subsection; and
2. There is no evidence available to HUD that challenges, in a substantial manner, any information provided in the plan.

B. Notification of HUD Decision.

1. Time Frame. Within 60 days of receipt of a plan or of a renewal request, HUD is required to notify a PHA whether its plan complies with statutory requirements. If HUD does not notify the PHA within 60 days, the plan is considered to be in compliance and HUD shall be considered to have notified the agency of such compliance.
2. Content of Notification. Where a Plan or renewal request does not comply, HUD is required to specify in its notification:
 - a. the reasons for the noncompliance, and
 - b. any modifications necessary for the plan to meet the requirements

WHERE TO SUBMIT REQUESTS FOR PLANS AND RENEWALS

HUD has delegated authority for approval of plan renewals to the local Public Housing HUD Director/ Public Housing Program Center Coordinator. A PHA must send a designated housing renewal request to its local Public Housing office for review and approval or disapproval. A listing of field offices and Public Housing Directors can be found at: http://www.hud.gov/offices/pih/about/field_office.cfm.

HUD has not changed the delegated authority for approval of new plans. However, a PHA must send a new designated housing plan to HUD in Washington, D.C., for review and approval or disapproval. If applicable, a PHA should send the new plan electronically to HUD and send an original plus two copies to the following address:

HUD
Office of Public and Indian Housing
Public Housing Management and Occupancy Division
Room 4222
451 7th Street, S.W.,
Washington, D.C., 20410

The telephone number is (202) 708-0744 (this is not a toll-free number).

Requests for Plan approvals or renewals should also be sent to State or local government entities that administer the CHAS/Consolidated Plan, with a request that any comments (regarding the PHA's Plan to designate housing or any Plan renewal) be sent to HUD's Headquarter's address in the case of new plans or to the applicable local Public Housing Office address in the case of renewals.

_____/s/_____
Michael Liu, Assistant Secretary for
Public and Indian Housing

APPENDIX

SUGGESTIONS FOR PREPARING AN APPROVABLE PLAN

This appendix provides guidance to assist housing authorities in developing an approvable plan. It addresses some of the common questions received from PHAs developing plans. The appendix is intended to be helpful and is not intended to impose additional requirements.

Plan Content:

- The project (or portion of a project) to be designated;
- The types of tenants for which the project is to be designated;
- Any supportive services to be provided to tenants of the designated project (or portion);
- How the design and related facilities (as such term is defined in Section 202 (d)(8) of the Housing Act of 1959) of the project accommodate the special environmental needs of the intended occupants;
- Any plans to secure additional resources or housing assistance to provide assistance to families that may have been housed if occupancy in the project were not restricted pursuant to this section.

Balancing the needs of the Community: The statute focuses on the total housing needs of the low-income population of a community, and not one group in particular. Successful Plans strike a balance between the needs of, and resources available to, designated and non-designated populations. In many communities, there may be unmet housing needs of both elderly families and persons with disabilities. For these communities, a PHA's demonstration that it will make reasonable efforts to provide housing choice voucher assistance or other appropriate resources to the non-designated group is sufficient basis for designation.

Fair Housing: When determining which buildings to designate, PHAs should consider whether the designation will increase minority concentrations. Also, if the PHA is subject to a Title VI or Section 504 voluntary Compliance Agreement or court order, the PHA should explain how the designated housing plan or the proposed renewal is consistent with that order or VCA.

Sources of Information on the Housing Needs of the Low-Income Population: PHAs may wish to rely on a range of data sources to assess and describe the housing needs of, and resources that would have been and can be made available to their low-income populations (as required by Section 7(d) of the statute). Data sources include:

- Ongoing analysis of waiting lists, such as the ratio of disabled families admitted compared to elderly families admitted before the designation;
- Unit assignment data;
- Unit turn-over data;
- Vacancy data;
- Voluntary transfer data;
- Near-elderly families data;
- Housing Needs Survey;
- A PHA jurisdiction's Consolidated Plan (includes census data);
- Local advocacy groups; and
- Public and private agencies familiar with the needs of the designated and non-designated populations.

Additional Housing Resources: The Plan should describe any plans to secure additional housing resources that will be available to families in the non-designated group (as required by Section 7(d)(e) of the statute). These resources may include the following:

-Existing housing owned or controlled by the PHA or by private firms or non-profit organizations that are available and affordable in the appropriate unit sizes. (In addition, a PHA preference given to the non-designated group for the remaining public housing units is a housing resource.)

-New housing resources created by the PHA.

-New housing resources created by a PHA adopting a Section 8 local preference for the non-designated group or by applying for Certificates/Vouchers under a NOFA “Rental Assistance for Persons with Disabilities, in Support of Designated Housing Allocation Plans.”

-New housing resources created by private firms or non-profit organization that will be available and affordable in the appropriate unit sizes.

PHAs should specify in their Plans the reasonable efforts they will make to replace the housing resources that will be newly unavailable to the non-designated group. The specific nature of the demonstration of reasonable efforts will vary across PHAs, depending on circumstances.

In some cases, PHAs can provide the non-designated group with housing opportunities during the 5-year period of the plan at a level comparable to those that the non-designated group would have had if there were no designation. However, other cases may exist in which PHAs will not be able to make available to the non-designated groups a comparable level of housing resources; documentation of the unavailability of a comparable level of housing resources would demonstrate that these PHAs have made reasonable efforts.

Estimate Vacancies: PHAs should estimate vacancies in the project to be designated during the Plan period, based on past experience and any other relevant information. PHAs also should use waiting list, admissions, and housing choice voucher program use data to estimate how many families from the designated and non-designated groups would have filled the vacancies, absent designation.

Accessible Housing: In describing how the plan meets the needs of both the designated and non-designated group, the plan should address housing options for persons who need accessible housing. Many communities do not have sufficient affordable accessible housing in the private market, and usually, most, if not all, of the accessible one-bedroom housing in the public housing stock is located in “mixed” buildings. One possible solution to this problem is to exclude accessible units from designation so that they are available to persons of any age who need them.¹

¹ Generally, under Sect in 504 of the Rehabilitation Act of 1973 and its implementing regulations, the PHA must pay for modifications of public housing units that are needed to accommodate the disabilities of public housing tenants.

Those individuals with disabilities who need modifications and who can no longer live in public housing because of designation may have difficulty using Section 8 certificates/vouchers if they cannot obtain assistance in paying for those modifications. In those instances, PHAs should provide whatever resources are needed to pay for modifications that are necessary to make an equivalent number of units available. One solution PHAs have developed to fulfill their responsibility to provide additional housing is to locate sources for funding, such as Community Development Block Grant (CDBG) funds, that they can use to assist these tenants.

Priority For Occupancy: In determining priority for admission to public housing projects (or portions of projects) that are designated, the PHA may make units in such projects (or portions) available only to the types of families for whom the project (or portion) is designated.

HUD's Review Plans: A determination of non-compliance because of "challenging" evidence may result from information that comes from outside sources. This could include information from the Consolidated Plan or the CHAS or from outside groups or individuals. PHAs should bear in mind that any comments submitted to HUD by advocates, residents, and members of the community will be considered during the HUD review. HUD is fully committed to its responsibility to assist PHAs that submit non-complying plans. HUD will work with these PHAs to ensure that the PHA staff understands the modifications needed for compliance with the requirements.