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

Special Attention:
Public Housing Agencies; Public Housing Field Office Directors**;** Public Housing Financial Management Division; Real Estate Assessment Center

NOTICE PIH 2014-24 (HA)

Issued: September 23, 2014

Expires: Effective until amended, superseded, or rescinded

Cross References:
Notice PIH 2012-11 (HA)
Notice PIH 2011-61 (HA)
Notice PIH 2011-57 (HA)
Notice PIH 2011-24 (HA)
24 CFR 903 Subpart B
24 CFR 965
24 CFR 990
Handbook 2006.06

Subject: Process for Public Housing Agency Voluntary Transfers and Consolidations of the Public Housing Program

1. Applicability.

This notice applies to public housing agencies (PHAs) which currently administer a public housing program under an Annual Contributions Contract (ACC) or will administer a public housing program as a result of a transfer or consolidation under this notice. This notice does not apply to the Section 8 Housing Choice Voucher program, which is covered under Notice PIH 2012-11, or the Section 8 Moderate Rehabilitation program.

2. Purpose.

The purpose of this notice is (1) to provide guidance specific to how HUD will process requests for the voluntary **transfer** of Public Housing programs, developments, and units between two or more PHAs or the voluntary **consolidation** of the Public Housing programs of two or more PHAs; and (2) to provide submission requirements and processing instructions for such requests.

3. Background.

Voluntary consolidations and transfers, full or partial, of public housing programs occur as required by state law or local ordinance, at the request of a PHA or its enabling jurisdiction, or as an agreed-to remedy in a troubled PHA recovery agreement or other plan with HUD. In some cases, states or localities, which control PHAs, determine to reorganize the PHAs within their jurisdictions or to redistribute the resources that the PHAs administer. In order for the state or local jurisdictions

to complete such a transaction, HUD's contracts with the relevant PHA(s) must be amended and certain administrative changes in HUD systems must be made to accommodate the change. The transfer or consolidation of public housing programs requires due diligence on the part of PHAs and HUD with multiple levels of coordination and processing in all areas of administration and operation, including but not limited to funding, financial and program audits, assessments, systems and data, files and reports, legal matters, grant awards, contract authority, compliance with civil rights related requirements, and financing requirements.

Transfers and consolidations are permanent transactions. Temporary transfers and consolidations will not be considered. If a temporary solution is appropriate, the PHAs should consult their respective field offices to explore measures that address the PHAs' temporary needs, such as contracting with an alternate management entity.

Voluntary transfers and/or consolidations of a PHA's Public Housing Program are not covered under Section 18 of the *U.S. Housing Act of 1937* ("1937 Act") and differ from demolitions and dispositions of public housing developments. A Section 18 demolition or disposition of public housing is undertaken if the PHA demonstrates that the retention of the property is not in the best interests of the residents or the PHA (Section 18(a)(2) and 24 CFR 970.17). Furthermore, a Section 18 disposition contemplates change in the use of the public housing property being disposed. By contrast, a voluntary transfer or consolidation of a public housing program retains the public housing program, albeit under the ownership of a different PHA and with the receiving PHA accepting the public housing responsibilities for the projects funded under the 1937 Act, ACC, and any applicable state and local requirements. Similarly, a voluntary transfer or consolidation of a public housing program does not contemplate a change in the use of the transferred public housing program.

4. <u>Definitions</u>.

a. ***Transfer*** – an organizational change in which a PHA (*divesting* PHA) turns over ownership and operation of public housing units and/or developments to one or more existing PHAs (*receiving* PHAs). In a transfer, no new PHAs or PHA Codes (e.g., CA002, IN074, etc.) will be established for the receiving PHA(s).

(1) ***Full Transfer*** – a transfer in which a divesting PHA permanently turns over ownership and operation of its entire Public Housing program and associated funding, including all of its public housing developments and units, to the receiving PHA(s). In a full transfer, the divesting PHA's public housing ACC is terminated after all financial, reporting, and other legal obligations of the divesting PHA are addressed.

(2) ***Partial Transfer*** – a transfer in which a divesting PHA permanently turns over ownership and operation of a portion of its public housing developments or units and associated funding to the receiving PHA(s). Only under the special circumstances as described in Section 4.g. below will HUD consider partial transfers. In a partial transfer, the number of units and amount of funding under the ACC is reduced for the divesting PHA and increased for the receiving PHA(s) by the number of units and amount of funds transferred, and all other provisions of the ACCs remain in effect for PHAs involved in the transaction.

b. ***Consolidation*** – an organizational change in which two or more PHAs (*divesting*

PHAs) turn over ownership and operation of their Public Housing programs to create a new PHA (*consolidated* PHA) with a new name and PHA Code. In a consolidation, a new public housing ACC is executed with the consolidated PHA, and the divesting PHAs' public housing ACCs are terminated after all financial, reporting, and other legal obligations of the divesting PHAs are addressed.

c. ***Divesting PHA*** – in a Public Housing transfer or consolidation, a PHA that turns over the ownership and operation of its units and/or developments and associated funding to one or more receiving PHAs or to a consolidated PHA respectively.

d. ***Effective Date*** – the date on which a divesting PHA's units and its associated funding are transferred to a receiving/consolidated PHA. The effective date of a transfer or consolidation must be the first day of any fiscal quarter (January 1st, April 1st, July 1st, or October 1st) of a given calendar year. Under special circumstances, as described in Section 4g below, HUD may consider exceptions to this requirement. Transfers and consolidations cannot be retroactive.

e. **.** ***Non-Performing PHA*** – a PHA that is designated as a troubled performer under the Public Housing Assessment System (PHAS) as listed on HUD's most recent official Troubled List or is designated a substandard performer based on its most recent published PHAS score. For non-performing PHAs the transfer/consolidation must be part of a HUD-approved recovery plan (improvement plan, action plan, corrective action plan, or repositioning strategy) of the troubled/substandard PHA. HUD may consider exceptions to this requirement for special circumstances as described in Section 4.g. below.

f. ***Receiving PHA*** – in a Public Housing transfer, a PHA that accepts the partial or full transfer of a program from a divesting PHA; in a Public Housing consolidation, the new consolidated PHA that is formed to accept the Public Housing program from one or more divesting PHAs under a new name, new PHA Code, and new Public Housing ACC.

g. ***Special Circumstances*** – when the request is:

- Part of a HUD-approved recovery plan, improvement plan, action plan, corrective action plan, or repositioning strategy of a troubled or substandard PHA;
- The result of a troubled/substandard PHA assessment; or
- For other reasons as agreed to by HUD.

5. <u>Submission Requirements for Transfers and Consolidations</u>

Requests to process transfers or consolidations of Public Housing programs must include the items listed below. HUD may request additional documentation or information if needed to process the request.

a. ***Submission Date***. Requests must be submitted at least 120 calendar days before the desired effective date. Under special circumstances, as described in Section 4.g. above, HUD may consider a shortened time frame.

b. ***What is Submitted***. PHAs must submit one electronic copy of the request to the Public Housing Director of the divesting and receiving PHAs' HUD field office. The official submission date will be the date the electronic copy is received by HUD.

(1) For transfers:

- Letter from the receiving PHA and a letter from the divesting PHA requesting the transfer be processed; Receiving PHA name and PHA Code; and Reason(s) for transfer submitted by receiving PHA;
- Resolution by the receiving PHA's governing body agreeing to the transfer and accepting the Public Housing program, developments, or units, as appropriate, of the divesting PHA;
- Opinion from the receiving PHA's counsel that the requested transfer is compliant with State and local law, that the transfer is permitted under State enabling legislation, and that the receiving jurisdiction is permitted to operate in each divesting PHA's jurisdiction;
- Items listed in Paragraph (3) below.

(2) For consolidations into a newly formed PHA:

- Letter from the consolidated PHA, stating its new name and requesting to enter into an ACC with HUD and be assigned a PHA Code;
- Letter from each divesting PHA requesting the consolidation;
- ***Enabling, Organization, Divestiture, Assumption, and Supporting Documentation as listed in Attachment A***;
- Intended fiscal year end (FYE) for the consolidated PHA;
- Items listed in Paragraph (3) below.

(3) For both transfers and consolidations, in addition to those items listed in Paragraph (1) or (2) above:

- Requested effective date (must be at least 120 days after submission date);
- Each divesting PHA's name and PHA Code;
- Inventory of projects and units to be transferred or consolidated, including PIC development grouping (formerly known as an Asset Management Project or AMP) numbers and the buildings and units associated with each number required by HUD, including submission of final audits and financial statements;
- Resolution of each divesting PHA's governing body agreeing to transfer/consolidate its program to/with another PHA and to complete all transfer/consolidation actions (proposed transfers and consolidations must be permitted by state PHA enabling law);
- Resolution or ordinance, as appropriate, by each divesting PHA's enabling jurisdiction assigning the HUD programs to the receiving/consolidated PHA, permitting the receiving/consolidated PHA to function in its jurisdiction, and agreeing to complete all transfer/consolidation actions required by HUD;

- Opinion from the counsel of each divesting PHA making representation of any Court orders, consent decrees, State or local receiverships or similar status, unsatisfied judgments against it, and any known potential or pending legal actions; any unusual or large liabilities, including but not limited to pension liabilities, unpaid settlements, and insurance claims; and any administrative or enforcement matter, such as an unresolved letter of findings under any fair housing or civil rights authority or a currently effective Voluntary Compliance Agreement (VCA) or Inspector General audit;
- Statement from each divesting PHA identifying any Public Housing demolition, disposition, or conversion actions that are pending approval, have been approved but not implemented, and those that have been completed for which deed restrictions, use agreements, reverter clauses, or other similar restrictions have been recorded;
- Statement from each divesting PHA identifying and describing all instrumentalities, affiliates, and nonprofit entities of the PHA, which have an interest in any developments or units of the Public Housing program being transferred to the receiving PHA;
- Statement from each divesting PHA identifying any non-HUD programs that may have an impact or be impacted by the transfer/consolidation.

c. ***Combined Requests***. PHAs that are intending to transfer or consolidate both their Public Housing program under this Notice and their Housing Choice Voucher program under Notice PIH 2012-11 or subsequent guidance, may submit a combined request, provided the requirements of both Notices are met.

d. ***Changes in Fiscal Year***. The transfer or consolidation may require a change in fiscal year because the fiscal year end (FYE) of the divesting PHA(s) may not be the same as the receiving/consolidated PHA. The request for changing the divesting PHA's FYE to conform to the FYE of the receiving or consolidated PHA must be part of the transfer/consolidation package and must conform to the requirements of Notice PIH 2011-57, Instructions for PHA Fiscal Year End Changes, or subsequent guidance. Depending on the difference between the two (or more) PHAs' FYEs, the close-out financial statement periods required of the divesting PHA may have to be shortened or lengthened. The divesting PHA is not required to submit a separate request for permission to adjust the closeout financial statement period under Notice 2011-57; the change to the term of the close-out financial statement will be processed automatically as part of the transfer/consolidation request.

e. ***Assumptions of Liabilities***. Under some circumstances and as permitted by State and local law, receiving/consolidated PHAs may request to be held harmless for the impacts of performance deficiencies and certain HUD liabilities sustained by divesting PHAs prior to transfer/consolidation while still under their own individual ACCs. For instance, a receiving PHA that receives developments from a divesting PHA designated PHAS substandard physical may request that those units be excluded from its next fiscal year's Physical Assessment Subsystem (PASS) score under PHAS for the fiscal year in which the developments were transferred, notwithstanding that those developments will be inspected and scored. Receiving and consolidated PHAs generally assume divesting PHAs' liabilities – including but not limited to those arising under pending litigation associated with the *1937 Act*, requirements of the *Fair Housing Act*, Title VI of the *Civil Rights Act*, or Section 504 of the *Rehabilitation Act of 1973*, and any tax debts.

f. ***Liability for Other Corrective Action.*** The liability for taking corrective action to resolve violations of civil rights, environmental, labor, or other requirements shall not be extinguished by a transfer or consolidation. A divesting PHA may have obligations under a current court or administrative order, voluntary compliance agreement, or other arrangement. As part of the submission requirements, HUD requires either (1) the divesting PHA takes corrective action to the satisfaction of HUD or another entity with authority to enforce a corrective action agreement or order, or (2) the receiving PHA demonstrates to HUD's satisfaction that it has assumed liability for taking the corrective action. Notwithstanding, there may be circumstances in which the PHA may not divest itself of liability for taking corrective action, even if it has transferred title of public housing to another PHA.

6. Field Office Processing and Recommendation to Headquarters.

Upon receipt of the request, the HUD field office will begin initial, completeness, and subject matter reviews. Refer to Attachment B for a summary table of processing steps.

a. ***Initial Review.*** The HUD field office will confirm that the requested transfer/consolidation is permitted by state law, that it is authorized by the divesting PHA's enabling jurisdiction, that it is authorized by the governing body of the divesting and receiving PHAs, and that it is permanent. If a divesting or receiving PHA is a non-performing PHA as defined in Section 4.e. above or if the request is for a partial transfer as defined in Section 4.a.(2) above, the HUD field office will verify that special circumstances apply as described in Section 4.g.. If the request fails to meet these requirements, the field office will return the request and notify the PHA of the reasons in writing no later than 30 calendar days after receipt of the request. Should the requested effective date not be on the first day of a quarter and/or the request not be received by HUD at least 120 calendar days in advance of the requested effective date **and** no special circumstances apply, the field office may propose an alternative effective date that meets these requirements.

b. ***Completeness Review.*** If the request meets all the initial requirements of Section 6a above, the field office will conduct a completeness review of the request. If the field office identifies any deficient or missing items from the list in Section 5 of this Notice, the field office will notify the PHA in writing no later than 30 calendar days after receipt of the request. The PHAs must then submit any missing items to HUD any time within 15 calendar days of the date of the deficiency notification. One exception to this requirement is the Enabling, Organization, Divestiture, Assumption, and Supporting Documentation listed in Attachment A, which includes items that may not be available from the consolidated PHA until after approval or effective date. Notwithstanding, HUD must receive evidence that a receiving or consolidated PHA has assumed liability for fulfilling any civil rights related order or agreement prior to HUD's acceptance of the transfer or consolidation request. If all deficiencies have not been remedied by the PHA within 15 calendar days of the date of the deficiency notification, the field office will notify the PHAs in writing that the request cannot be processed further.

c. ***Subject Matter Review.*** If the request meets the initial requirements of Section 6.a. above and the submission requirements listed in Section 5 above, no later than 60

days after receipt of the request the field office will complete a subject matter review of the request to identify any issues or concerns requiring special processing and alert responsible Headquarters and satellite program and system offices of the request, highlighting any identified issues and concerns.

- *Field reviews* will include the Office of Public Housing, Office of Fair Housing and Equal Opportunity, and Field Counsel.
- *Headquarters* program and system offices to be notified will include, at a minimum, the Office of Public Housing and Voucher Programs, Office of Public Housing Investments, Office of Field Operations (OFO), Real Estate Assessment Center (REAC), Grants Management Center, and any other offices and sub-offices responsible for the identified issues and concerns.

Within 15 calendar days of being alerted by the field office, the responsible program offices will complete their own subject matter reviews and provide comments to the field office. OFO will coordinate and facilitate the completion and transmission of comments to field offices from these reviews.

d. ***Recommendation.*** Upon receipt of comments from the program offices, the field office will resolve any conflicting information and prepare an acceptance recommendation, including any terms and conditions attendant to reassignment of funding pursuant to the transfer or consolidation request. No later than 45 calendar days prior to the proposed effective date, the field office will forward the request and recommendation to the Assistant Secretary for Public and Indian Housing.

Under special circumstances, as described in Section 4.g. above, HUD may allow for shortened or lengthened processing deadlines. If a deadline falls on a weekend or holiday, the deadline shall be the previous work day.

7. Decision Notification.

Headquarters will notify the field office of any terms and conditions attendant to HUD's acceptance and funding of the transferred public housing or new consolidated housing authority. The field office will in turn notify the respective PHAs in writing no later than 30 calendar days prior to the effective date. The acceptance letter will state any additional requirements or conditions for the divesting, receiving, and/or consolidated PHAs prior to or after the effective date. Headquarters will distribute acceptance letters to all stakeholder program, financial, and satellite offices, including but not limited to REAC, Chief Financial Officer (CFO), and the Fort Worth Accounting Center.

8. Post- Transfer/Consolidation Requirements and Conditions.

a. ***Scope.*** For full transfers and consolidations, divesting PHAs must transfer ownership and operation of all components, chattels, and allied programs of their Public Housing program to the receiving PHA(s) or consolidated PHA, including but not limited to projects/units, assets, administrative buildings, non-dwelling units, and property under ACC, Operating Funds, operating reserves, Capital Funds, Replacement Housing Factor funds (RHF), Demolition and Disposition Transitional Funding (DDTF), Public Housing development and HOPE VI grants, projects, and

funds, Section 5(h) and Section 32 homeownership programs, Public Housing Family Self Sufficiency (FSS) and Resident Opportunity for Self Sufficiency (ROSS) grants, and FSS escrow balances. At the time of the transfer/consolidation, the divesting PHA(s) must transfer to the receiving/consolidated PHA(s) the total budget authority on hand, restricted and unrestricted fund balances, grant balances, and accumulated reserves.

b. Annual Contributions Contract (ACC).

(1) For consolidations into a newly formed PHA:

A consolidated PHA shall execute an ACC (Forms HUD-53012A and 53012B, July 1995) with HUD on the effective date for commencement of operations for the consolidated PHA.

(2) For transfers:

If they have not already done so, divesting PHAs in a partial transfer and receiving PHAs in a partial *or* full transfer must execute with HUD the most recent approved version of the ACC on or prior to the effective date of the transfer.

(3) For both transfers and consolidations:

- Receiving/consolidated PHAs must accept the terms and assignment of divesting PHAs' ACC amendments including, but not limited to, amendments for development, Capital Fund, Replacement Housing Factor, Demolition and Disposition Transitional Funding, Capital Fund Financing, Operating Fund Financing, and enforcement, as well as any pending ACC amendments for developments in progress. Upon HUD's satisfaction that all actions required for a full transfer or consolidation have been completed, including the requirement to submit unaudited and audited financials, the ACCs for fully divesting PHAs shall be terminated.
- In all cases, an ACC must not be terminated prior to the effective date of the transfer or consolidation.

c. PIH Information Center (PIC) Data. In accordance with the ACC and Notice PIH 2011-61 and subsequent guidance, receiving and consolidated PHAs must ensure that all transferred units and development groupings (formerly known as Asset Management Projects or AMPs) are properly accounted for in PIC. HUD Headquarters will complete the moving of all Family Reports (Form HUD-50058) from divesting PHAs to receiving and/or consolidated PHAs so that all affected families will be recorded under the receiving/consolidated PHA's PHA Code with the last action code (Field 2a on the Family Report) that was entered by the divesting PHA. For a partial transfer divesting PHAs must ensure that PIC accurately reflects their remaining units. Prior to the transfer or consolidation, the divesting PHA must bring its Family Report and other PIC data up to date.

d. Fund Obligations. Funding of each divesting PHA must be reassigned to the receiving/consolidated PHA in accordance with each funding program's requirements and procedures.

(1) **Operating Fund**. HUD will issue an Obligation Letter to the receiving/consolidated PHA to transfer disbursed and future operating funds, budget authority, operating reserves, and undisbursed operating fund balances previously provided to a divesting PHA for each transferred development.

(2) **Capital Fund and HOPE VI Grants**. To transfer the grants of a divesting PHA, HUD and the receiving/consolidated PHA will execute an ACC amendment for each Capital Fund, RHF, DDTF, and HOPE VI grant that has not passed its expenditure date and where there remains an undisbursed balance. Unobligated, obligated, expended, and undisbursed balances of each grant will transfer to the receiving/consolidated PHA and obligation and expenditure deadlines will remain the same as when originally provided to the divesting PHAs.

(3) **ROSS and FSS Grants**. To transfer the grants of a divesting PHA, HUD and the receiving/consolidated PHA will execute a grant amendment to replace the name of the divesting PHA with that of the receiving/consolidated PHA for each ROSS and FSS grant that has not passed its expenditure date and where there remains an undisbursed balance. Unobligated, obligated, expended, and undisbursed balances of each grant will transfer to the receiving/consolidated PHA and obligation and expenditure deadlines will remain the same as when originally provided to the divesting PHAs.

e. ***Line of Credit Control System (LOCCS).*** Upon completion of fund obligation requirements, HUD shall provide all future funding authorized for the receiving/consolidated PHA, by virtue of the transfer/consolidation, directly to a receiving/consolidated PHA's LOCCS account in accordance with each fund's respective procedures. In addition, the fund obligations shall authorize the receiving/consolidated PHA to access undisbursed funding that remains in a divesting PHA's LOCCS account as of the effective date. A receiving/consolidated PHA must follow LOCCS security procedures to access the accounts of each divesting PHA, updating the divesting PHA's LOCCS account with its own tax identification number and bank account information. The receiving/consolidated PHA will continue to access the remaining funding through each divesting PHA's former LOCCS account until all funds are expended and disbursed and each grant is formally closed. Upon reaching the effective date of the transfer/consolidation, HUD shall terminate LOCCS access for all users of each divesting PHA.

f. ***Development Groupings.*** Receiving and consolidated PHAs may not change the development grouping configurations after accepting the divesting PHA's project groupings until the first annual project expense level (PEL) recalculations following the transfer.

g. ***Cooperation Agreements.*** To the maximum extent possible, receiving and consolidated PHAs must ensure that cooperation agreements with the divesting PHAs' enabling jurisdictions are negotiated and executed by the effective date of the transfer or consolidation. Where State or local implementing legislation prevents either a receiving or consolidated PHA from executing such agreements until the transfers of assets are made effective, the receiving and consolidated PHAs must

ensure that cooperation agreements with the divesting PHAs' enabling jurisdictions are negotiated and executed as soon as possible following the effective date.

h. ***Declarations of Trust.*** Receiving/consolidated PHAs shall execute and record new Declarations of Trust against all public housing property that is transferred to them as required by the ACC and Notice PIH 2011-61 and subsequent guidance.

i. ***Insurance.*** Receiving and consolidated PHAs must ensure that on the effective date there is sufficient and uninterrupted insurance coverage in accordance with the ACC and 24 CFR 965 for all projects, units, and property transferred from the divesting PHAs.

j. ***Audits and Financials.*** A divesting PHA must have a close-out audit performed and make financial submissions to HUD for its final fiscal year. If prior to the effective date of the transfer/consolidation a divesting PHA has properly procured and entered into a contract with an independent public accountant to conduct its close-out audit, it may request that the receiving/consolidated PHA hold eligible funds in escrow on its behalf, to be released by the receiving/consolidated PHA to the divesting PHA upon HUD's acceptance of the divesting PHA's audit.

(1) HUD will not hold receiving/consolidated PHAs responsible for auditing, completing the auditing activities, making the submissions, or closing any audit findings of divesting PHAs.

(2) Under some circumstances, HUD may request copies of banking records, general depository agreements, or statements of account balances, and/or conduct its own final close-out or forensic audit of a divesting PHA following a transfer/consolidation.

k. ***Financial Data Schedule (FDS) Reporting.*** For transfers of a development, or a portion of a development (e.g., a building or buildings in a development), during either the divesting or receiving PHA's fiscal year, the PHA must report the financial activity of the development, or portion thereof, transferred or received in the "Other Projects" column in the FDS. The financial information reported in the "Other Projects" column will consist of the partial year information for the time during the fiscal year that the development or portion thereof, was under the respective PHA's ACC. For the divesting PHA, this will primarily be income statement activity.

(1) For the first full fiscal year during which the receiving PHA holds the development, or portion thereof, and every fiscal year thereafter, the receiving PHA will report the financial information using the applicable PIC project number.

(2) For PHAs that have converted to asset management under 24 CFR 990, the "Other Projects" column automatically displays on each project FDS in the Financial Assessment Subsystem (FASS). PHAs that have not converted to asset management under 24 CFR 990 will continue to report their public housing activity in the single project column until the "Other Projects" column functionality is available on the FDS. Until that time, non-asset management PHAs may appeal their FASS score based on the inclusion in

the single project column the partial year data for the transferred development, or portion thereof.

l. Public Housing Assessment System (PHAS).

(1) Divesting PHAs will not be scored under PHAS for any portion of their Public Housing program that they transferred ownership and operation of during their fiscal year. They, however, will be scored under PHAS for the portion of their Public Housing program that they did retain and operate for the full 12-months of their fiscal year. For full program transfers, divesting PHAs will not be scored under PHAS if their final fiscal year is less than 12 months.

(2) Receiving PHAs will not be scored under PHAS for any portion of a Public Housing program that they received during their fiscal year. Receiving PHAs, however, will be scored under PHAS for the portion of their Public Housing program that they did operate for the full 12-months of their fiscal year.

(3) A newly established consolidated PHA will not be scored under PHAS for a partial, initial fiscal year.

m. Funding Estimates. If requested, HUD may agree to provide an estimate of future operating and capital funding levels for programs of the receiving/consolidated PHA after transfer/consolidation, such as the PEL.

n. Annual and 5-Year Plans. Both transfers and consolidations are likely to have an impact on the receiving/consolidated PHA's Annual and 5-Year Plans. HUD expects the receiving/consolidated PHA to review transfer/consolidation Plans to assess their impact on the ability of prospective applicants and participants to fairly access the receiving or consolidated PHA's housing resources and the impact of a transfer/consolidation on the achievement of fair housing goals.

The receiving/consolidated PHA should be especially attentive to admissions and occupancy requirements and processes which might differ from those of the divesting PHAs. These might include but are not limited to:

- Whether to maintain Designated Housing Plans;
- The effect of site-based waiting lists on housing opportunities for minority populations;
- Need for revisions to the Admissions and Continued Occupancy Plan (ACOP);
- Location of PHA application intake offices; and
- The effect of the use of local preferences.

Similarly, compliance with physical accessibility requirements[1] might be significantly altered by the transfer/consolidation. The receiving/consolidated PHA must ensure that the PHA Annual Plan reflects the PHA's obligation to affirmatively

1 C.f., Section 504, Titles II or II of the ADA, and/or the Fair Housing Act,

further fair housing in its assessment and activities[2] and that the Annual Plan is consistent with the 5-Year Plan.

Receiving PHAs that have to revise their program policies to reflect the addition of new public housing units will likely have to submit a significant amendment to the Annual Plan.[3] Such amendments are reviewed by HUD to ensure program compliance, including fair housing and civil rights compliance. HUD may also require additional information, such as a certification of consistency with the 5-Year Consolidated Plan.

While a consolidated PHA is a new entity and may be exempt from completing an Annual Plan as described in the paragraph below, it is still required to submit a 5-Year Plan.

A receiving/consolidated PHA that is not a qualified agency under the *Small Public Housing Authorities Paperwork Reduction Act of 2008* must complete the resident consultation, and public comment and hearing process to institute or amend both its Annual and 5-Year PHA Plans to encompass the projects, developments, and units of the divesting PHAs and submit it to HUD no later than 75 days after the effective date of the transfer/consolidation. A receiving/consolidated PHA that is a qualified agency under the *Small Public Housing Authorities Paperwork Reduction Act of 2008*, is not required to submit a PHA Annual Plan unless the sum of the total Public Housing and Housing Choice Voucher units after the transfer/consolidation is more than 550 units. If the sum is more than 550 units, the previously qualified PHA will no longer be designated a qualified PHA, and must complete and submit an Annual Plan[4]. In all cases, whether a receiving/consolidated PHA is qualified or not qualified following a transfer/consolidation, the PHA must continue to undertake a resident consultation, and public comment and hearing process, as well as submit a Capital Fund annual statement as required any notices or instructions posted to the Office of Capital Improvements website.[5]

Until such time as all-inclusive PHA Annual and 5-Year Plans are adopted, a receiving/consolidated PHA shall be bound by the PHA Annual and/or 5-Year Plans of the respective divesting PHAs.

o. ***Monies Owed.*** If a divesting PHA owes money to its Public Housing program accounts, to HUD, or to the U.S. Treasury, because of an executed repayment agreement, an audit finding for which a management decision has not yet been rendered, or another circumstance, these funds should be paid back from appropriate sources by the divesting PHA prior to the effective date. If a divesting PHA is unable to pay monies owed and the receiving/consolidated PHA refuses to assume or is prohibited from assuming the debt of a divesting PHA, where the transfer or consolidation is in the best interest of HUD and HUD programs, HUD may consider forgiving debts related to the Public Housing programs where permitted by the

2 24 CFR 903.7(o)
3 24 CFR 903.7(r)(2)(ii)
4 24 CFR 903 Subpart B
5 http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/capfund.

Audits Management System Handbook 2006.06.

p. ***Capital Funds.*** Until the obligation and expenditure periods of the Capital Funds for the divesting PHAs have expired, these accounts shall not be merged with other Capital Funds of the receiving/consolidated PHA, but the receiving/consolidated PHA shall manage these funds and may use them for the benefit of any public housing units under ACC of the receiving/consolidated PHA.

q. ***Resident Notification.*** No later than 30 days prior to the proposed effective date or as required by State and local law, whichever is longer, each divesting PHA must notify residents in writing of the requested transfer/consolidation, providing a point of contact, mailing address, email address, and telephone number, for the receiving/consolidated PHA. No later than 15 days prior to the effective date, in addition to any requirements for consultation to institute or amend its PHA Annual and/or 5-Year Plans, the receiving/consolidated PHA must notify residents of (a) where to pay rent, (b) who to call for building maintenance, and (c) who to call in the case of an emergency.

r. ***Admission and Continued Occupancy Policies (ACOP).*** The receiving/consolidated PHA must ensure that any and all eligible residents of divesting PHAs execute new leases in accordance with the receiving/consolidated PHA's applicable State and local law(s). Such residents must be permitted by the receiving/consolidated PHA to remain in their current units following the effective date, provided they are otherwise not disqualified from assistance, for a continued occupancy period of not less than three months from the effective date or until their first annual reexamination after the effective date, whichever is later.

s. ***Public Housing Family Self Sufficiency (FSS) Programs.*** For a full or partial transfer in which both the divesting and receiving PHAs have Public Housing FSS programs, the Contracts of Participation, including start and end dates, goals, and escrow balances, of participants of each divesting PHA's existing FSS program residing in the transferred developments will be assumed by the FSS program of the receiving PHA and become subject to the receiving PHA's FSS Action Plan. The receiving PHA will inform transferring participants of any differences in policy they will be subject to following the transfer.

For a full or partial transfer or consolidation in which the divesting PHA has a Public Housing FSS program but the receiving/consolidated PHA does not, the receiving/consolidated PHA must honor the Contracts of Participation of current participants of each divesting PHA's existing FSS program residing in the transferred developments, including the coordination of services and tracking and administration of escrows for each family for the full period of their contract (up to five to seven years) or until the family exits the program by graduating or dropping out in accordance with regulations and the respective divesting PHA's FSS Action Plan. The receiving/consolidated PHA may adopt the FSS Action Plan of a divesting PHA or establish a new plan approved by the field office.

In a full transfer or consolidation, existing FSS grants of the divesting PHA(s) shall be transferred to the receiving/consolidated PHA to support FSS coordinators that

serve participants until the funds are expended. In a partial transfer, a divesting PHA may elect to retain an existing FSS grant to support FSS coordinators that serve its remaining participants. Instructions on eligibility for renewals will be issued in future Notices of Funding Availability.

t. ***Resident Opportunities for Self Sufficiency (ROSS)– Service Coordinator Grants***. In a full transfer or consolidation, existing (ROSS) Service Coordinator grants and programs of each divesting PHA shall be transferred to the receiving/consolidated PHA, which must continue to implement the respective existing work plans of each divesting PHA's ROSS grant(s) or seek field office approval to modify the work plan(s) until the funds are expended. The receiving/consolidated PHA will work with any non-profit or resident association which has a current ROSS grant that serves residents or properties of the divesting PHA to ensure that services are continued for the transferred residents and properties, as appropriate. In a partial transfer, a divesting PHA may elect to retain an existing ROSS grant to serve its remaining developments provided the field office determines the existing work plan is appropriate or approves modifications to the work plan requested by that PHA. Instructions on eligibility for subsequent year funding will be issued in future Notices of Funding Availability.

u. ***Resident Councils.*** Receiving/consolidated PHAs must recognize the duly elected resident councils of any transferred projects and developments of the divesting PHAs, except when the resident council is jurisdiction-wide. If a divesting PHA has a jurisdiction-wide resident council, the receiving/consolidated PHA should facilitate the establishment or expansion of its own jurisdiction-wide resident council to encompass the transferred projects and developments.

v. ***Enabling, Organization, Divestiture, Assumption, and Supporting Documentation for Consolidated PHAs.*** Consolidated PHAs must submit all items in Attachment A which were not available until after the approval or effective date when the new PHA had commenced operations.

w. ***Effective Communication for Persons with Disabilities; Limited English Proficiency.*** PHAs must ensure that public housing applicants and residents affected by a proposed transfer or consolidation understand the implications of the change, including, for example, information on grievance or rent payment procedures. All communications shall be provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with Section 504 of the *Rehabilitation Act of 1973*. PHAs must take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency (LEP), pursuant to Title VI of the *Civil Rights Act of 1964* and *Executive Order 13166*. This may mean providing language assistance services to ensure meaningful resident and community involvement for persons with LEP as a result of their national origin.[6]

[6] HUD offers extensive guidance on the provision of information to LEP persons in *Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance) in the Federal Register on January 22, 2007 (72 FR 2732). For assistance and information regarding LEP obligations, go to: http://www.justice.gov/crt/lep/guidance/HUD_guidance_Jan07.pdf . For more information on LEP, please visit http://www.hud.gov/offices/fheo/promotingfh/lep.cfm.

x. ***Fair Housing.*** Divesting, receiving, and consolidating PHAs are bound by all applicable fair housing and civil rights requirements, including but not limited to those under the Fair Housing Act, Title VI of the *Civil Rights Act of 1964*, Section 504 of the *Rehabilitation Act*, and Titles II and III of the *Americans with Disabilities Act* and their implementing regulations, as well as the duty to affirmatively further fair housing.[7]

9. Information Contact.

Inquiries about this Notice should be directed to the respective local Public Housing field office.

10. Paperwork Reduction Act.

The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act of 1955* (44 U.S.C. 3501-3520) and assigned OMB control number 2577-0280. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

/s/

Jemine A. Bryon,
Acting Assistant Secretary for Public and
Indian Housing

[7] See HUD's general nondiscrimination and equal opportunity requirements at 24 CFR 5.105, including the Department's equal access rule that requires HUD-assisted or HUD–insured housing to be made available without regard to sexual orientation, gender identity, or marital status.

Attachment A

Enabling, Organization, Divestiture, Assumption, and Supporting Documentation for PHA/ACC Consolidations into a Newly Formed Consolidated PHA

Enabling Documentation

- Copy of the state enabling legislation and any other relevant state or local laws
- Incumbency Certificate, which identifies the Chief Executive Officer and principal members of the Consolidated PHA's jurisdictional enabling entity (e.g., City Council, Board of Supervisors, Board of Commissioners), the date each was elected or appointed to office, and the beginning and ending dates of their current terms of office.
- Consolidated PHA's jurisdictional enabling entity certifications
    - Certified copy of the Consolidated PHA's jurisdictional enabling entity resolution(s) that authorized/established the Consolidated PHA and an extract of the jurisdictional enabling entity's proceedings
    - Certified copy of the Consolidated PHA's jurisdictional enabling entity rules, regulations, ordinances or procedures for adopting resolutions
    - Certified copy of the ordinance, resolution or rule which fixes the day, hour, and place of *regular* public meetings of the Consolidated PHA's jurisdictional enabling entity (in circumstances in which the hour of holding such *regular* meetings is not formally designated, a certificate of the clerk of the Governing Body to that effect is sufficient); or if action is taken at a *special* meeting, proof with respect to the calling of such meeting.

Organization Documentation

- Evidence of Tax Identification Number for the Consolidated PHA
- Certified copy of bylaws of the Consolidated PHA (and other organization documents, as applicable)
- Certified copy of minutes of the organization meeting(s) in which the bylaws and official seal were adopted, officers elected, and other resolutions related to the organization of the Consolidated PHA were adopted
- Certified copies of the notices of the above-referenced meetings (public and special), and waivers of and consent to said meetings
- Resolutions (these may be included in a consolidated resolution) of the Consolidated PHA Board of Commissioners
    - Confirmation of the appointment of Commissioners and designation of first chairperson
    - Approval of officers
    - Approval of appointment of Executive Director/Contracting Officer
    - Adoption of bylaws
    - Adoption of official seal
    - Adoption of time and place of Board meetings

    - Certified copies of the oath of office for each original appointee to the Board of Commissioners
- Incumbency Certificate, which identifies the Board of Commissioners and officers of the Consolidated PHA, the date each was elected or appointed to office, and the beginning and ending dates of their current terms of office
- Certified statement that all organization documents are authentic and have not since been rescinded, modified and/or amended
- Attorney opinion from the Consolidated PHA that it is duly constituted
  At minimum, counsel for the Consolidated PHA must opine that the Consolidated PHA: (a) is duly constituted, validly organized, currently existing, and in good standing under all applicable laws; (b) has adopted organization documents that constitute a legal, valid and binding agreement that has not since been amended; (c) has duly appointed its initial commissioners and officers; (d) satisfies statutory and regulatory criteria for PHAs; (e) has the requisite power and authority to enter into and/or adopt cooperation agreement(s), and has done so accordingly; (f) has the requisite power and authority to enter the Consolidated Annual Contribution Contract with HUD; and (g) is not subject to pending litigation that will threaten its establishment and/or critical functions.

Divestiture Documentation

- Certified copies of all Declarations of Trust (DOTs), including amendments thereto, for each Divesting PHA
- Certified copies of current deeds for properties to be transferred to the Consolidated PHA
- Certified copies of all Use Agreements (for federal properties) to be assigned to Consolidated PHA, including amendments thereto
- Resolutions to transfer federal properties and assets to Consolidated PHA
- Attorney opinion from each Divesting PHA regarding the transfer of properties. At minimum, counsel for the Divesting PHA(s) must opine that the Divesting PHAs: (a) owned all real properties to be transferred to the Consolidated PHA, and such properties, as identified in the opinion, constitute all real properties required to be placed and currently under DOTs; (b) have the power and authority to transfer such properties to the Consolidated PHA, and have entered into a binding agreement to do so; and (c) has an outstanding obligation to take corrective action in accordance with a judicial or administrative order or a voluntary agreement.
- Approval letters for the transfer of properties subject to a DOT for each Divesting PHA, if disposition approval by the Special Applications Center (SAC) is required because of a hiatus in coverage between the Annual Contributions Contracts (ACCs) of a Divesting PHA and the Consolidated PHA.

Assumption Documentation

- Certified copy of all new Cooperation Agreement(s) (Form HUD-52481)
- Attorney opinion from the Consolidated PHA regarding the assumption/acquisition of transfer properties. At minimum, counsel must opine that the Consolidated PHA: (a) has the requisite power and authority to accept and own the transfer properties, and has been legally transferred such properties as identified in the opinion; (b) has placed such properties under DOT(s), which constitute the legal, valid and binding obligations of the Consolidated PHA; (c) has executed and duly recorded the DOT(s) in the official records in a first lien position, and has not since subordinated or released such lien; (d) has taken all actions, made all filings and obtained all permits, licenses and approvals to the extent required under applicable law to acquire, develop, own, operate and manage all applicable public housing projects; and (e) has assumed the liability to take corrective action in accordance with a judicial or administrative order or a voluntary agreement to resolve a finding that the divesting PHA violated a fair housing or civil rights laws or regulations.
- Resolutions (these may be included in a consolidated resolution) of the Consolidated PHA Board of Commissioners
    - Approval of assumption/acquisition of federal housing programs
    - Adoption of Declarations of Trust
    - Adoption of Cooperation Agreement(s)
- Recorded Deed or Assignment and Assumption Agreement, as applicable, which demonstrates that all property subject to a DOT has been transferred to the Consolidated PHA in a manner consistent with state and local law requirements. If permitted under state and local law, it is acceptable to consolidate such transfer in a consolidated Assignment and Assumption Agreement; however, such agreement must specifically identify all properties being assigned.
- Evidence of Title Insurance, in the form of a certification from the Consolidated PHA to HUD, that it obtained a title insurance policy that guaranteed that the property's title was good and marketable before taking title, and that it promptly recorded the deed and DOT in the format prescribed by HUD.
- Preliminary Title Report (for all properties to be placed under a DOT)
- Recorded DOT(s), which may list all properties, as applicable, in the format of a bulk Development or Modernization DOT, as applicable
- Approval letters for the acquisition of transferred properties subject to a DOT by the Consolidated PHA, if acquisition approval by HUD is required because of a hiatus in coverage between the Annual Contributions Contracts (ACCs) of a Divesting PHA and the Consolidated PHA.

Supporting Documentation

- Working Party List for the Consolidated PHA, including names, addresses, e-mails, telephone numbers, fax numbers, etc., of all relevant parties
- Consolidated Annual Contribution Contract (ACC) (HUD-53012)
- Assumption Agreement(s) for outstanding Voluntary Compliance Agreements, as applicable.
- Assumption of obligations and contractual requirements of bond issues
- General Depository Agreement (HUD-51999)
- Direct Deposit Sign-Up Form (SF-1199-A)
- Change of Address/Name Request (HUD-27056)
- LOCCS/Access Authorization Form (HUD-27054-A)
- Master Project Accounting Data Form (HUD-52540)
- Resolutions (these may be included in a consolidated resolution) of the Consolidated PHA Board of Commissioners
    - Approval of Organization Chart of the Consolidated PHA
    - Adoption of the Admissions and Occupancy Policy
    - Adoption of Personnel Policy
    - Adoption of Procurement Policy
    - Adoption of Maintenance Policy
    - Adoption of Section 8 Administrative Policy, if applicable
    - Adoption of Investment Policy
    - Adoption of Enterprise Income Verification (EIV) Policy
    - Adoption of Deconcentration & Income Targeting Policy
    - Adoption of Family Self-Sufficiency Policy, if applicable
    - Adoption of Capitalization Policy
    - Adoption of Funds Transfer Policy
    - Adoption of Internal Control Policy
    - Adoption of Multifamily Financing Facility Program
    - Adoption of Disposition Policy
    - Adoption of Criminal Trespass Ban Form
    - Adoption of Safety Policy
    - Adoption of Pet Ownership Policy
    - Adoption of Disability/Handicapped Policy
    - Adoption of Resident Initiatives Policy

Attachment B

Processing Milestone	No later than timeframe (NLT)
PHAs submit request to Field Office (FO)	120 days prior to effective date
FO conducts Initial Review and returns request if it does not meet requirements; and if Initial Review is satisfactory, FO conducts Completeness Review and notifies PHA of any deficiencies	30 days after receipt
PHA remedies deficiencies with FO (If not remedied within 15 days, FO returns request)	15 days after notification
FO completes Subject Matter Review and alerts program/system offices; or if Completeness Review is not satisfactory, FO returns request for incompleteness	60 days after receipt
Program/system offices complete Subject Matter Review and provide comments to FO	15 days after being alerted
FO submits acceptance/rejection recommendation to A/S	45 days prior to effective date
A/S accepts/rejects and notifies FO; FO notifies PHA	30 days prior to effective date