

Use of Proceeds: Section 18 Dispositions

How can PHAs use proceeds from a Section 18 disposition?

- ✓ **GROSS PROCEEDS: COSTS OF DISPOSITION:** PHAs may use gross proceeds to pay for the reasonable and legitimate costs of disposition (e.g. closing costs, legal fees, relocation expenses, environmental review and remediation).
- ✓ **GROSS PROCEEDS: RETIREMENT OF DEBT (Unless Waived by HUD):** After paying disposition costs, unless waived by HUD, PHAs must use proceeds to retire outstanding debt obligations on the project. HUD assumes that PHAs will request a waiver if debt exists.
- ✓ **NET PROCEEDS: LOW-INCOME HOUSING:** If any proceeds remain after the PHA has paid for the costs of disposition, these proceeds are known as net proceeds. PHAs may use net proceeds for:

(A) The provision of low-income housing: Section 3(b)(1) of the U.S. Housing Act of 1937 (the Act) defines “low-income housing” as “decent, safe, and sanitary dwellings assisted *under this Act.*”

- (i) Construction, Rehabilitation, or Acquisition of public housing (ACC) units: A PHA may use proceeds for the construction, rehabilitation, or acquisition of new public housing (ACC) units.
- (ii) Leveraging of amounts for securing housing developments that include public housing (ACC) units or units assisted by the Housing Choice Voucher Program (Section 8 units): A PHA may use proceeds as “leverage” in order to partner with a private entity for the purpose of developing mixed-finance housing. However, the mixed-finance housing must include either public housing (ACC) units developed under 24 CFR 941 (Subpart F) or Section 8 units (tenant-based or project-based). These units can be on-site or off-site of the development that is being disposed.
- (iii) Construction, Rehabilitation, or Acquisition of Units that will be assisted by the Housing Choice Voucher Program (Section 8): A PHA may use disposition proceeds for the construction, rehabilitation, or acquisition of housing units so long as it provides that some units that will be operated as Section 8 units, proportionate to the amount of disposition proceeds to other funds.
- (iv) Other Housing Assisted under the Act: A PHA may use proceeds to fund other housing programs under the Act, including a Section 32, 24, 9 or 8(Y) homeownership program.



“low-income housing” is limited to housing provided under the Act. It is not the same as housing for “low-income families” even though both housing serves families at 80% or below AMI.



Allocating Proceeds in a mixed-income development to only public housing (ACC) and Section 8 units

If a PHA is proposing to use disposition proceeds to acquire, construct, or rehabilitate units which will be part of a mixed-income housing development, it must indicate the number of units that will be operated as public housing (ACC) and/or Section 8 units. A PHA may use proceeds only for these units. For instance, if a PHA proposes to leverage \$4 million of disposition proceeds to support at low-income housing development that will cost \$8 million dollars to develop, HUD will require that 50% of the units in the development be used as ACC and/or Section 8 units. Similarly, if a PHA proposes to leverage \$4 million of proceeds to support the development of a 60-unit mixed-income housing development that will include 12 ACC units and 48-market rate units, HUD will require that all \$4 million of proceeds be allocated towards the development of the 12 ACC units. HUD may also require evidence that sufficient funds exist to develop the remaining 48 market-rate units.

(B) To benefit the residents of the PHA.

(i) Provision of social services to residents of PHA: The term “social services” is not defined by the Act. In its narrative description to the Department, the PHA should indicate the approximate number of families it will service and what type of social services will be provided.

(ii) Benefits to residents of the PHA: A PHA has tremendous flexibility in demonstrating that its proposed use of proceeds will benefit its residents. Possible uses could be to modernize or create a recreation room, laundry room, or day-care facility for PHA residents in a PHA development, or to build a playground on a PHA development for residents of the PHA.

(C) Leveraging amounts for securing commercial enterprises, on-site in public housing projects of the PHA, that are appropriate to serve the needs of the residents.

A PHA can use proceeds as “leverage” in order to partner with a private entity for the purpose of developing a non-dwelling commercial enterprise that is on site on a public housing development.



Use of Proceeds vs. Dispositions at below Fair Market Value (FMV):

HUD uses different criteria for approving the use of proceeds from a disposition and for approving dispositions at below fair market value (FMV)

PROCEEDS FROM DISPOSITIONS must be used for LOW-INCOME HOUSING (as defined by the Act).

DISPOSITIONS AT BELOW FMV may be justified upon a showing of COMMENSURATE PUBLIC BENEFIT. 24 CFR Part 970 gives HUD broad discretion in determining a “commensurate public benefit”. HUD will decide this on a case-by-case basis, but HUD’s policy is generally that a PHA can demonstrate a commensurate public benefit if some of the property will be used to support housing (rental or sale) for low-income families (80% or below AMI).

Frequently Asked Questions (FAQ)

Q: My PHA would like to use net proceeds to build new homes that it will sell to low-income families earning 80% or lower than AMI. Is this a permissible use of proceeds?

A: NO. Please see above. However, if the PHA agrees to sell these units through a HUD-approved Section 32, 24, or 9 homeownership program, or to fund a Section 8(Y) homeownership program, the use would be permissible.

Q: Under the previous example, what if my PHA is willing to make these homes “available” for purchase by residents with Section 8(Y) vouchers? Is this sufficient?

A: NO. It would not be sufficient for a PHA to make these homes merely “available” for purchase to Section 8(Y) homeownership voucher-holders. The PHA would need to “set-aside” or sell those units only to Section 8(Y) voucher holders.

Q: My PHA would like to give the net proceeds from this disposition to its non-profit affiliate which will build a new 100-unit dwelling building using Low-Income Housing Tax Credits (LIHTC). The building will be rented to residents qualifying under the LIHTC program. Is this a permissible use of proceeds?

A: NO. Please see above. However, if the PHA agreed to rent a proportionate number of those units to residents assisted with Section 8 assistance (project-based or tenant-based) the use would be permissible.

Q: A PHA is proposing to use net proceeds to provide a loan (e.g. leverage) to a non-profit entity that will build a senior development for low-income elderly via the HUD 202 program. Is this a permissible use of proceeds?

A: NO. The HUD 202 program is not low-income housing assisted under the 1937 Housing Act. It is housing approved under Section 202 of the Housing Act of 1959, as amended. Therefore, the use is not permissible.

USE OF PROCEEDS: PHA Reporting Requirements and HUD Field Office Monitoring

If proceeds will be generated from the disposition, the SAC's approval documents will specify an exact approved use of the proceeds. The SAC may approve a PHA to use proceeds for closing costs, relocation, counseling costs, low-income housing purposes, and other permitted purposes.

If a PHA's plans change and the PHA would like to use its proceeds for another permissible purpose, the PHA must request an amendment to the SAC approval documents. The HUD field office is not authorized to amend the terms of the SAC's approval. The HUD field office will instruct the PHA to apply to the SAC for an amendment.

Pursuant to 24 CFR 970.35, PHAs must document their use of proceeds by providing financial statements to their HUD field office showing how the proceeds were expended by item and dollar amount. The HUD field office may also monitor the PHA's use of proceeds to ensure compliance with the SAC's approved use of proceeds and to ensure that the PHA is using the proceeds in an economical and efficient manner (without excessive administrative and overhead costs).

USE OF PROCEEDS: Section 32 Homeownership

How can PHAs use proceeds from a Section 32 homeownership program?

✓ **SOURCES OF PROCEEDS:** A PHA may realize sales proceeds in connection with selling homes under a Section 32 homeownership program from two primary sources: (1) payments made by homebuyers to purchase the property (e.g. earnest money, down payments, payments out of the proceeds of mortgage loans, payments made under a lease-purchase arrangement, principal and interest payments under a purchase-money mortgage); and (2) payments made to the PHA upon resale of the homeownership units, including any earned appreciation.

✓ **GROSS PROCEEDS: COSTS OF HOMEOWNERSHIP PROGRAM:** PHAs may use gross proceeds to pay for the costs of relocation and other legitimate costs related to the sale of the homeownership units (e.g. construction costs, developer fees, counseling agency fees).

✓ **NET PROCEEDS: LOW-INCOME HOUSING:** If any proceeds will remain after the PHA has paid for the costs of its homeownership program, these proceeds are known as net proceeds. A PHA must include a narrative in its homeownership plan explaining how it intends to use net proceeds. The PHA may use these proceeds for any low-income housing purpose (see guidance for permissible uses of proceeds from Section 18 dispositions above).

A PHA may use proceeds from a Section 32 homeownership program to fund the homeownership program from which the funds were generated or to fund a new homeownership program under the Act. A PHA may also use proceeds for purposes justified to ensure the success of its homeownership program (e.g. create a reserve to repurchase, repair, and resell homes in the event of defaults). If the homeownership plan utilizes a Purchase and Resale Entity (PRE), the PHA may opt to have the PRE return sale proceeds to the PHA or may permit the PRE to use them for low-income housing purposes.