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

Special Attention:	Notice:	PIH -2010- 44 (HA)
Public Housing Agencies (PHAs) Public Housing Office Directors Regional Directors Field Office Directors Regional & Chief Counsels	Issued:	October 20, 2010
	Expires:	October 31, 2011
	Cross References: PIH Notice 2009-28 (HA)	

1. **Subject.** Revision and Extension of Guidance on requirement for PHAs to record current Declaration of Trusts (DOTs) against all public housing property and guidance on adding and removing public housing units and other property from the Annual Contributions Contract (ACC).

2. **Background.** The requirement for PHAs to ensure a current DOT is recorded against all property that has been acquired, developed, maintained, or assisted with funds from U.S. Housing Act of 1937 (Act) funds is long-standing and well established by the Act, HUD regulations, and the ACC. Notwithstanding this requirement, HUD is increasingly finding that DOTs are not recorded against a great deal of public housing property. In many instances, PHAs may be unaware that the original DOT that was recorded against the property (at acquisition or development) has expired with the repayment and/or forgiveness of development funds. However, if these developments have continued to receive assistance under the Act, federal law requires that PHAs record current DOTs against them.

   In addition to being an ongoing federal requirement, it is important for PHAs to maintain current DOTs against their public housing properties for other reasons, including: (a) to ensure the accuracy of HUD subsidy calculations and payments under the Operating Fund and Capital Fund; and (b) to expedite HUD's processing and approvals of other federal public housing programs (e.g., Capital Fund Finance Program (CFFP) and Operating Fund Financing Program (OFFP) under Section 30 of the Act, mixed-finance development under 24 CFR§ 941 Subpart F, and dispositions under Section 18 of the Act).

3. **Purpose.** This notice serves to: (1) remind PHAs of their continuing legal responsibility to ensure that a current DOT is recorded against all of their public housing property; (2) remind PHAs that they are required to be in full compliance with DOT requirements; and (3) provide guidance on adding and removing public housing units and other property from the ACC. For purposes of this notice, all public housing projects, Asset Management Projects (AMPs) and other property that has been acquired, developed, maintained, or assisted with Act funds is

referred to as "public housing property." This Notice makes minor clarification changes to Notice PIH 2009-28 (HA).

4. Declaration of Trust (DOT).

A. DOT Overview. The DOT is a legal instrument that grants HUD an interest in public housing property. It provides public notice that the property must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.[1]

B. Term of DOT. A DOT must remain of record until the latest expiration date required by the funds and/or activities at the property, as follows:

- Acquisition or Development: property acquired or developed with Act funds must be operated as public housing for a 40-year period that begins on the date on which the project becomes available for occupancy, as determined by HUD. (This 40-year period can be extended if PHA receives other funding, such as Capital Funds or Operating Funds).

- Modernization (Capital Fund): property modernized or receiving assistance of Capital Funds must be operated and maintained as public housing for a 20-year period that begins on the latest date on which modernization is complete or assistance is provided with Capital Funds covered by the Capital Fund ACC Amendment (HUD-52840-A).

- Operation (Operating Fund): property that receives Operating Funds must be operated as public housing for a 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided.

C. Form of DOT. The form of DOT that a PHA should execute and record against public housing property depends on the funding from HUD. PHAs must record the appropriate form of DOT for their property. In most instances, the PHA will record the HUD-52190-A for Development Grant Projects or the HUD-52190-B for Public Housing Modernization Grant Projects. Both of these forms are available at www.hud.gov/hudclips. For mixed-finance development pursuant to 24 CFR§ 941 Subpart F, the form of DOT is known as the Declaration of Restrictive Covenants, and HUD has model forms drafted for this purpose. HUD provides guidance on this requirement and document as part of the mixed-finance development application and approval process.

In limited circumstance and with prior written approval from the Deputy Assistant Secretary of the Office of Public Housing Investments (OPHI), HUD permits PHAs to use Operating Funds and Capital Funds under OFFP and CFFP to develop or rehabilitate public housing property. PHAs should consult OPHI in HUD Headquarters for guidance on this type of financing and

[1] HUD considers the DOT to be a Vital Record for purposes of its Continuity of Operations (COOP), HUD's internal efforts to ensure that a viable capability exists to continue essential functions across a wide range of potential emergencies.

the appropriate form of DOT to execute and record against property where such funding is utilized.

In addition, if a PHA has acquired or leased public housing property through the improper use of Act funds (e.g., acquires real property with Operating Funds or Capital Funds without HUD approval), it must immediately record a DOT against the property. In this instance, the DOT must remain in effect until: (1) the improperly used funds are reimbursed to the PHA's Operating Fund and/or Capital Fund; and (2) HUD has approved the disposition of the property. PHAs should consult with their field office and execute and record against property the HUD-52190-A where such improper use of funds has occurred.

D. Requirement for PHAs to be in compliance with DOT requirements. Based on the Act, HUD regulations and ACC, PHAs certify (with their 5-year and/or Annual Plan under 24 CFR Part 903) their compliance with all Federal requirements, including DOT requirements (see HUD-50077). Pursuant to PIH Notice 2009-28 (HA), PHAs were required to ensure that current (unexpired) DOTs were recorded against all of their public housing property within 12 months of the date of PHA's next fiscal year beginning with PHAs with fiscal years commencing on October 1, 2009. All PHAs should now be in full compliance with this requirement. HUD considers PHAs to be in full compliance with these requirements when DOTs with legal description are recorded against all of their public housing property. At any time, HUD may conduct selective monitoring to verify that a PHA is in compliance with DOT requirements. In addition, PHAs are also reminded that the requirement to maintain current DOTs against public housing property is auditable under Section 15 of the ACC and is incorporated into the compliance monitoring requirement CFDA 14.850 of the OMB Circular A-133 Compliance Supplement.

If HUD should determine that a PHA is not in compliance with its PHA Plan requirements and certifications, it may take whatever action it deems necessary and appropriate including but not limited to the following actions: (A) temporarily withhold cash payments pending correction of the deficiency by PHA; (B) disallow all or part of the cost of the activity or action not in compliance; (C) wholly or partly suspend or terminate the current award for the PHA's program; (D) require that some or all of the grant amounts be remitted to HUD; (E) condition a future grant and elect not to provide future grant funds to the PHA until appropriate actions are taken to ensure compliance; (F) withhold further awards for the program or (G) take other remedies that may be legally available.

HUD does not require PHAs to revise and re-record DOTs based on changes to public housing unit counts or based on changes to development or AMP numbers (i.e., information that does not change the real property covered by the DOT). However, PHAs should have an internal method in place to identify the current development numbers for the sets of land and other property against which each DOT is recorded. A development number may correspond to part or all of the property under one or more DOTs.

The introduction of AMP development numbers in 2008 replaced many of the development numbers previously in effect. In cases where none of the building numbers, or only part of the building numbers, were transferred to AMP development numbers, the existing development numbers were retained. There is a "cross-walk" from old to new development numbers identifying the building numbers moved to AMP development numbers at

http://www.hud.gov/offices/pih/systems/pic/dvcrswlk.cfm. In some cases, Section 18 applications for disposition of the remaining land are made under the existing, pre-AMP, development numbers. Some PHAs have recently gone through the process of ensuring full compliance with DOT requirements in the course of Mixed-Finance, OFFP and CFFP transactions and no additional actions may be necessary. Other PHAs may need to do a complete inventory of all of their properties and, when necessary, take affirmative steps to record current DOTs against their properties. HUD gives PHAs utmost flexibility to determine the scope and process of the review necessary to ensure compliance with DOT requirements. If PHAs use counsel, title companies or other entities to assist them in verifying DOT compliance, HUD encourages PHAs to obtain a certification from the counsel or entity opining to such compliance.

E. Ongoing requirement to monitor DOTs. The requirement for PHAs to maintain current DOTs of record against public housing property is ongoing and PHAs shall closely monitor their public housing property for DOT compliance. PHAs are reminded that HUD will not approve a PHA's 5-Year or Annual Plan unless the PHA certifies that is in compliance with all federal requirements, including DOT requirements.

F. Release of DOT. The current forms of DOT do not automatically terminate or expire from public records when HUD approves a unit or property for removal from the ACC, therefore after receiving disposition approval from the Department's Special Applications Center (SAC), a PHA must request that their field office release the DOT for the property that was approved. Provided that the release is authorized based on a HUD approval or other headquarters action and with the concurrence of HUD counsel, authorized agents of Public Housing field offices (e.g. Public Housing HUB Director or Program Center Coordinator) may release DOTs. A PHA shall not dispose of a property that has been approved by the SAC for disposition until its HUD field office releases the DOT on that property. In many instances, the acquiring entity of the property will require that a PHA to obtain this release prior to the disposition closing in order to unencumber title on the property. However, even if an acquiring entity is not requesting that HUD release the DOT, after receiving the disposition approval from the SAC, PHAs must request that their field office release the DOT from the property approved for disposition so that the PHA's public housing inventory is accurate for purposes of determining Operating Fund and Capital Fund subsidies.

PHAs and HUD field offices must follow the below steps to cause HUD to release a DOT:

(1) PHA receives approval from the SAC to dispose of public housing property (under Section 18 of Act);
(2) PHA requests HUD field office release the DOT on the property approved for disposition (it is the responsibility of the PHA to prepare the form of release for HUD signature);
(3) HUD field counsel verifies that (a) all of the property for which the PHA is requesting a DOT release has been approved by the SAC for disposition and (b) all contingencies in the HUD approval letter have been satisfied (additional documentation may be required from the PHA, including a copy of the recorded DOT, proposed disposition documents, land survey, warranty deed, and title report);
(4) HUD field counsel recommends a partial or full release of the DOT (as applicable);
(5) The HUD Public Housing official in the field office with the delegated authority (e.g., HUB Director or Program Center Coordinator) releases the DOT; and

(6) PHA records the release in the applicable county land records.

Once HUD releases the DOT, the PHA may dispose of the property. Even if PHAs have obtained a Section 18 disposition approval from the SAC, PHAs shall not actually dispose of any public housing property until they have received a release of the DOT from its HUD field office.

5. Annual Contribution Contract (ACC).

A. ACC Overview. The ACC is the written contract between HUD and a PHA under which HUD agrees to provide funding to a PHA in exchange for the PHA's agreement to provide safe, decent and sanitary housing to eligible families pursuant to all federal requirements. All public housing property (dwelling units, non-dwelling units and buildings, and vacant land) is subject to the ACC and must be classified in the ACC under a specific development number. The current form of the ACC is HUD-53012-A (7/95) and all PHAs should be operating under this form.

B. Removing units and other property from the ACC. A PHA must obtain HUD approval to remove public housing property from its ACC. To request HUD approval to remove public housing property from the ACC pursuant to a demolition/disposition action under Section 18 of the Act, a conversion action under Section 22 or 33 of the Act, or a homeownership action under Section 32 of the Act, the PHA must submit an application (form HUD-52860) to the SAC via PIC. HUD may also approve the removal of property from a PHA's ACC through a HOPE VI revitalization plan (units only, not the underlying land) or another legal authority. PHAs are advised that even if they obtain HUD approval under Section 18 of the Act or a HOPE VI Revitalization Plan to demolish all of the dwelling units and buildings of a public housing project(s) under a specific development number(s), if the underlying land was acquired with Act funds, it is still "under ACC" and must remain documented in the PIH Information Center (PIC) and under a DOT until the PHA receives HUD approval to dispose of that land via Section 18 of the Act or another legal authority. Units and other property removed from the ACC are no longer eligible to receive Operating or Capital Funds assistance, but the PHA may be eligible to receive an asset-repositioning fee pursuant to 24 CFR§ 990.190 and replacement housing factor (RHF) funds pursuant to 24 CFR § 905.10(i).

C. Adding units and other public housing property to the ACC. A PHA may add new units and/or other property to its ACC in three ways: (1) development of low-income housing using any generally accepted method of traditional development pursuant to 24 CFR §941.102, including conventional, turnkey, acquisitions, or force account; (2) mixed-finance development pursuant to 24 CFR § 941, Subpart F in which case the PHA must enter into a Mixed-Finance ACC Amendment as part of a mixed-finance transaction; or (3) by receiving Operating Fund only subsidy from HUD for the operation of public housing.[2]

[2] Section 9(g)(3) of the Act provides that a PHA may generally not construct public housing units that exceed the number of public housing units that were in the PHA's inventory as of October 1, 1999.

D. Unit Count under the ACC. The current form of ACC no longer contains a count of dwelling units. Except for units added as part of mixed-finance development, HUD no longer requires a "unit change" amendment to the ACC to reflect HUD approved removals and additions of dwelling units. Instead, the unit count in PIC is deemed to be the unit count under the PHA's ACC. Therefore, it is essential that PHAs and field offices ensure that removals and additions of units in PIC are accurately documented and maintained.

6. PIH Information Center (PIC).

A. PIC Overview. All public housing property (including dwelling units, dwelling units used for non-dwelling purpose, non-dwelling buildings, and land, including vacant land) that is subject to the ACC must be documented in PIC under a development number.

B. Requirement to document ACC changes in PIC. After HUD approves a removal action, the PHA is authorized to consummate the removal action (e.g., sales closing, signing of ground lease, actual demolition). After consummating the action, pursuant to 24 CFR § 970.35, the PHA must enter the dates of actual removal into PIC. The field office must then acknowledge the removal of the units and land in PIC. Upon the field office's acknowledgement, the units or other public housing property are officially removed from the ACC and the status of the property changes to "removed from inventory" in PIC. However, as previously stated, the removal of dwelling units from the ACC does not automatically include the removal of the underlying land from the ACC and a separate disposition approval from the SAC may be required in order to remove that land from ACC. Similarly, after HUD approves an addition of public housing units or other property to a PHA's ACC (e.g., by mixed-finance development), the PHA must enter the units in PIC. All property acquired or developed with Capital Funds must also be added to the PHA's ACC via PIC. Development includes the acquisition of units that may be owned by a PHA or that may be owned by an affiliate or instrumentality as defined in Notice PIH 2007-15 (HA), as amended or extended.

C. Termination of public housing property in PIC. Only the SAC is authorized to terminate public housing property in PIC. Neither PHAs nor field offices (including PIC Coaches) are authorized to terminate public housing property in PIC. A PHA or field office may request that the SAC terminate a public housing property in PIC only after all of the following occur: (a) HUD has approved all public housing property for removal; (b) the public housing property has been removed from the ACC as described in Section 6B of this notice and is classified in PIC as "removed from inventory"; and (c) the field office has released the DOT for all of the underlying land at the development. If a field office—through field counsel review—finds that a DOT covers more property than has been approved by HUD for removal, the field office should notify the PHA that the public housing property must remain in PIC under that development number until the PHA either: (1) submits an additional removal application to the SAC for the remaining property under the DOT; or (2) transfers and records the remaining property to another project/AMP in its inventory or to a new development number. When land is transferred to a different development number, the field office—through field counsel review—may require the PHA to enter into a new DOT with a revised legal description. In cases where PHAs redevelop buildings and units, commonly the method of redevelopment requires disposition of the underlying land under Section 18. But, in situations where a PHA is redeveloping buildings and units under a new development number, but is retaining ownership of part or all of the land during and after the redevelopment, it is not necessary for the PHA to apply for disposition of the

land it maintains ownership of throughout the process. The field office may then recommend that the SAC terminate the old development number in PIC based only on the demolition of the buildings and units. However, prior to terminating the old development number in PIC, the SAC may request evidence from the field office that all of the property under the DOT for the old development number has been transferred to new or existing development numbers.

D. Other PIC requirements. Annually, PHAs must update property records and use restrictions in PIC when (a) HUD 52840-A Capital Fund Amendments to the ACC are executed and (b) when Capital Funds are used to develop public housing.

7. **Paperwork Reduction Act**. The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 2501-3520). The OMB control numbers are 2577-0075 and 2577-0226. 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.

8. **Technical Assistance.** For technical assistance on DOTs, PHAs should contact their field office. For technical assistance on Section 18 disposition or other inventory removals, PHAs should contact the SAC.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing