

MEMORANDUM

To: Council of Large Public Housing Authorities

From: Reno & Cavanaugh, PLLC

Date: February 5, 2021

Re: Section 18 Demolition/Disposition and Notice PIH 2021-07 (HA)

You have asked us to provide background and analysis of the changes to the Section 18 demolition and disposition process as set forth in HUD’s new Notice PIH 2021-07 (the “Notice”). Overall, the most significant change is that the Notice revises eligibility for projects seeking to combine RAD and Section 18 in ways that will likely increase the number of tenant protection vouchers (“TPVs”) for which a project would be eligible. This, in turn, can allow projects to receive increased operating revenue, which can then be leveraged in the underwriting process to obtain additional financing. There are also a number of other minor changes included throughout the Notice, which are identified on the attached blackline included at [Exhibit A](#).

Introduction

The Notice, issued January 19, 2021, and entitled “Demolition and/or disposition of public housing property, eligibility for tenant protection vouchers, and associated requirements,” supersedes and replaces Notice PIH 2018-04, which included prior HUD guidance on the demolition and disposition process. In the Notice, HUD now clarifies that “except when based on statutory or regulatory authority or law...[the Notice’s contents] are not meant to bind the public in any way.”¹ Although Executive Order 13891, which likely precipitated this revision, was repealed on January 20, 2021, the nonbinding guidance language in the text of the Notice remains. In the Notice, there are significant changes to the eligibility of combined RAD and Section 18 projects for tenant protection vouchers, which are subsequently detailed in this Memorandum. Beyond those revisions, many of the requirements in Notice PIH 2018-04 remain unchanged. However, for convenience, at [Exhibit A](#), this Memorandum also includes a blackline of the recently-issued Notice against the earlier Notice PIH 2018-04.

¹ See PIH 2021-07 (Jan. 19, 2021).

Background on RAD and Section 18 Blending

Although many PHAs had been creatively structuring RAD and Section 18 deals to maximize subsidy, Notice PIH 2018-04 formally introduced the concept of RAD and Section 18 blending. In doing so, HUD created an opportunity for units that would not otherwise qualify for Section 18 to receive TPVs. In Notice PIH 2018-04, HUD allowed projects that were converting at least seventy-five percent (75%) of public housing units through RAD to dispose of the remaining twenty-five percent (25%) of public housing units through Section 18, when the following conditions were met:

1. The units proposed for Section 18 disposition are to be replaced with Section 8 project-based voucher (“PBV”) assistance;
2. The aggregate number of replacement units (RAD and PBV) must meet the RAD “substantial conversion of assistance” requirements;
3. The replacement units must be either new construction or substantially rehabilitated, which is defined as “hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, in excess of 60% of the Housing Construction Costs [(“HCC”)] as published by HUD for a given market area”²; and
4. The project does not utilize nine percent (9%) low-income housing tax credits (“LIHTC”).

The ability to combine RAD and Section 18 in a single project often provides a way for PHAs and project owners to receive additional operating revenues, based on differences in the rent-setting requirements. RAD rents are generally limited to the existing public housing subsidy received by the project, which is often a below-market rent due, in part, to the chronic underfunding of the public housing program. However, when using Section 18 for units, PHAs are eligible for tenant-protection vouchers, which serve as additional Section 8 vouchers that can then be project-based. Because the vouchers are funded at market rent levels, a RAD and Section 18 blend in a project enables a PHA to access additional operating revenues, which can be used to service debt on the project.

Changes to RAD and Section 18 Blending in the Notice

In the new Notice, HUD removes its earlier requirement that the replacement units be either new construction or have rehabilitation costs in excess of 60% of the HCC and expands the percentage of units in a combined RAD and Section 18 project that can qualify for Section 18.

² See Notice PIH 2018-04 (March 22, 2018).

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HUD retains the requirements that units proposed for Section 18 disposition be replaced with PBV assistance, that the aggregate number of replacement units constitute a “substantial conversion of assistance,” and continues the prohibition on combining RAD and Section 18 with a 9% LIHTC award. However, now, instead of limiting the number of Section 18 units to 25% of the public housing units in the project, HUD will allow up to eighty percent (80%) of units in a project to qualify for Section 18 and has implemented a graduated scale to determine what percentage of units will be eligible for Section 18 as follows:

<u>Hard Construction Costs as a Percentage of HCC</u>	<u>Maximum Percentage of Units Authorized for Section 18 When Combined with RAD</u>
Hard construction costs exceed 90% of the HCC and the project is in a high-cost area ³	80% of public housing units may be disposed of through Section 18
Hard construction costs exceed 90% of the HCC	60% of public housing units may be disposed of through Section 18
Hard construction costs are between 60% and 90% of the HCC	40% of public housing units may be disposed of through Section 18
Hard construction costs are between 30% and 60% of the HCC	20% of public housing units may be disposed of through Section 18

This is a substantial change from HUD’s prior requirements and will increase the number of TPVs a project will be eligible to receive, enabling project owners and PHAs to access additional operating revenues.

RAD and Section 18 Blending for Small PHAs

The Notice also provides a new RAD/Section 18 blending option for PHAs with 250 or fewer public housing units (“Small PHAs”). Under this option, up to eighty percent (80%) of the PHA's units in a RAD converting project may be disposed of under Section 18, with the remaining twenty percent (20%) being disposed of through RAD. In order to be eligible, the Small PHA must submit a repositioning plan to HUD for removal of its remaining units from the public housing program and must agree not to develop any new public housing units under otherwise available Faircloth authority.

Conclusion

By increasing the potential eligibility for TPVs under the Notice, projects are likely to benefit from the increased operating revenue that they could not otherwise access.

³ For these purposes, the term “high-cost area” is defined as “those where HCC exceeds 120% of the national average.” See Notice PIH 2021-07 (Jan. 19, 2021).

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Exhibit A

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Washington, DC 455 Massachusetts Avenue NW, Suite 400 ~ Washington, DC 20001 ~ Tel (202) 783 2800
Columbia, MD 10320 Little Patuxent Parkway, Suite 900 ~ Columbia, MD 21044 ~ Tel (202) 783 2800
Nashville, TN 424 Church Street, Suite 2910 ~ Nashville, TN 37219 ~ Tel (615) 866 3222

renocavanaugh.com



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-5000

ASSISTANT SECRETARY FOR
PUBLIC AND INDIAN HOUSING



~~U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT~~
~~WASHINGTON, DC 20410-5000~~

~~OFFICE OF PUBLIC AND INDIAN HOUSING~~

Special Attention of:
Public Housing Agencies (PHAs)
Public Housing Directors
Resident Management Corporations

Notice PIH ~~2018-04~~ 2021-07 (HA)

Issued: ~~March 22~~ January 19, 2018
2021

~~Revised: July 3, 2018 to update
Section 6(F)1 and 6(F)3~~

~~Revised: December 14, 2018 to add
2018-09 and minor corrections~~

This notice supersedes and replaces
Notice PIH ~~2012-7~~ 2018-04. This
notice remains in effect until
amended, superseded or rescinded.

Cross-References: Notices: PIH 2011-7; 2016-13; 2016-20; 2016-22; ~~2016-23, 2017-10, 2017-22, 2017-24, 2018-09~~
2016-23; 2017-10; 2017-22; 2017-24; 2020-04; RAD Final Implementation Notice Revision 4 (H-2019-09 PIH-2019-23 (HA))

Subject: Demolition and/or disposition of public housing property, eligibility for tenant-protection vouchers, and associated requirements.

1) Purpose. This notice explains application requirements to request HUD approval to demolish and/or dispose of public housing property under Section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) (1937 Act) and related Tenant Protection Voucher (TPV) eligibility for such actions. This notice is used in conjunction with HUD's implementing regulations at 24 CFR part 970, and related rules and applies to all SAC applications, including those under review or already approved by HUD if the PHA is requesting an amendment of HUD's approval.

For purposes of this notice, public housing or public housing property means low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than assistance under 42 U.S.C. 1437f of the 1937 Act (section 8), and includes public housing units developed pursuant to the mixed-finance development method. The term "project" is defined by

section 3(b)(1) of the 1937 Act and means housing developed, acquired, or assisted by a PHA under the 1937 Act, and the improvements of any such housing. Public housing includes non-dwelling property (e.g., vacant land, administrative buildings and community buildings) acquired, developed, modernized, operated-or maintained with 1937 Act funds.

The contents of this notice, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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2) SAC Application Requirements.¹

A. Processing. HUD's Special Applications Center (SAC) reviews applications for demolition and disposition (SAC applications) in accordance with the requirements of 24 CFR part 970. SAC only reviews complete SAC applications. ~~If a PHA submits a SAC application that is substantially incomplete or deficient (e.g., missing required supporting documentation), SAC returns the SAC application to the PHA and informs the PHA of the deficiencies.² Prior to re-submitting the SAC application, the PHA must consult residents and resident groups and secure a new board resolution on any material changes from the original submission.~~ Pursuant to 24 CFR 970.29, HUD disapproves a SAC application if HUD determines: (1) a certification made by the PHA under 24 CFR part 970 is clearly inconsistent with the PHA Plan or any information and data available to or requested by HUD; or (2) the application was not developed in consultation with residents, resident groups, and local government officials.

B. PHA Plan. Proposed demolition or disposition must be included in a PHA Annual Plan, Significant Amendment, or MTW Annual Plan. ~~Qualified All PHAs, including qualified PHAs,~~ must discuss the demolition or disposition at a public hearing, as required by 24 CFR 903.7.³ 903.17.²

C. Environmental Requirements. Proposed demolitions and disposition must comply with 24 CFR 970.13 and have environmental clearance, which means final approval from a HUD Approving Official or the Responsible Entity of an environmental review conducted under 24 CFR part 50 or 58. See Notice PIH 2016-22. PHAs are responsible for providing the Responsible Entity or local Office of Public Housing (Field Office) with a full description of the activities in connection with the demolition and/or disposition (including relocation, known future use of the site, use of disposition proceeds) to comply with aggregation ~~requirements.⁴~~ requirements.³ The site re-use is not limited to future actions by the PHA, but includes any future known ~~reuse~~ re-use. See 24 CFR 970.13(b) for factors in determining what constitutes a known future use.

D. Resident Consultation. In addition to resident consultation for PHA Plans, PHAs must comply with resident consultation requirements under 24 CFR 970.9, including consultation with: (i) residents who may be affected by the demolition or disposition action; (ii) resident organizations for the affected project, if any; (iii) PHA-wide resident organizations, if any; and (iv) the Resident Advisory Board or equivalent body. PHAs must ensure communications and materials are accessible to individuals with disabilities and take reasonable steps to provide meaningful access to persons with Limited English Proficiency (LEP). See section 6)F.5.

E. Offer of Sale to Resident Organizations (Disposition Only). PHAs must, in appropriate circumstances as determined by the Assistant Secretary, provide resident entities the opportunity to purchase the project, subject to certain exceptions. See 24 CFR 970.9(b)(3). A PHA requesting consideration of exceptions to 24 CFR 970.9(b)(1) must follow the process stated at 24 CFR 970.9(b)(4).

F. Board Resolution. A PHA must obtain a signed and dated resolution from its Board of Commissioners authorizing the PHA to submit the SAC application. The Board must be consulted and approve all material parts of the SAC application including the justification;

¹ Note that these items are not a substitute for the SAC application requirements described in 24 CFR part 970 or HUD-52860. Rather, the below provide additional guidance and clarification on certain requirements.

~~² SAC currently returns applications to PHAs by changing the status of the application to DRAFT status in the Inventory Management System/PIH Information Center (PIC) (IMS/PIC).~~

~~³ Qualified PHAs are defined by the Housing and Economic Recovery Act (HERA) as a PHA that (1) has a combined unit total of 550 or less public housing units and section 8 vouchers; (2) is not designated troubled under section 6(j)(2) of the 1937 Act, the Public Housing Assessment System (PHAS), as a troubled public housing agency during the prior 12 months; and (3) does not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months.~~

~~⁴ See 24 CFR 58.32 and 24 CFR 50.21.~~

~~consulted and approve all material parts of the SAC application including the justification;~~ method of disposition (if applicable); use of proceeds; and relocation plan. The authorizing resolution must be dated after all local government and resident consultations are conducted.

G. Phased Applications. PHAs may submit SAC applications through a “phased” method with staggered timelines, so that ~~units~~ buildings in later phases remain eligible for ~~operating subsidy~~ Operating Funds. A PHA submits a SAC application in IMS/PIC for each phase, with different relocation start timelines. The same supporting documentation (e.g., board resolution, resident consultation, government consultation) may be used for its all phases. See 24 CFR 970.7(a).

H. Amendments. PHAs must comply with all material terms of the SAC application. If after receiving HUD approval, a PHA’s plan changes on material terms, SAC approval of the change is required. Material terms include (i) method of disposition; (ii) public bid sale where offer is less than 80% of fair market value (FMV) appraisal submitted in the SAC application (the PHA must describes its due diligence in offering the public housing property for sale on the open and competitive market and its rationale for accepting an offer that is less than 80% of appraised FMV. ~~Alternatively;~~ alternatively, the PHA may submit an updated appraisal); and (iii) terms of commensurate public benefit disposition (the PHA must describe the revised future use of the property so HUD can confirm the commensurate public benefit); ~~and (iv) use of proceeds~~. PHAs request amendments by sending an email to SACTA@hud.gov with the information noted above and a board resolution approving the change. On a case-by-case basis, SAC may require additional supporting documentation to support an amendment (e.g., evidence of local government and/or resident consultation; confirmation of environmental clearance).

3) Disposition.

A. Justification Criteria for Dwelling Units. HUD reviews PHA certifications and narratives, along with other information available to or requested by HUD, on a case-by-case basis. HUD approves SAC applications for dispositions based on at least one of the following ~~three~~ two reasons:

1. Retention of the property is not in the best interests of the residents or the PHA. HUD will approve a request for disposition by sale or other transfer of a public housing project or other real property if the PHA certifies that the retention of the property is not in the best interests of the residents, relative to:

a. ~~1. Surrounding Area: 24 CFR 970.17(a). Retention of units is not in the best interests of the residents or the PHA because the~~ Surrounding Area (24 CFR 970.17(a)): The conditions in the area surrounding the project (e.g., density, industrial or commercial development) adversely affect the health or safety of the residents or the feasible operation of the project by the PHA. The PHA supports its application with at least one of the following:

(1) a. ~~To support a SAC application based on health~~ Health or safety; PHAs demonstrate conditions that present serious obstacles in maintaining the units as healthy or safe housing and why the PHA cannot cure or mitigate those

conditions in a cost-effective manner. HUD encourages PHAs to submit supporting third-party documentation, which include environmental reviews conducted under 24 CFR part 58. HUD may consider other available information, including analyses of land development, socioeconomic, community ~~facilities and services, and natural features.~~ ~~In accordance with Notice PIH 2016-22, HUD may elect to perform an environmental review under 24 CFR part 50; or~~

facilities and services, and natural features. In accordance with Notice PIH 2016-22, HUD may elect to perform an environmental review under 24 CFR part 50; or

~~(2) b. To support a SAC application based on infeasible~~ **Infeasible operation**, PHAs demonstrate a lack of demand for the

~~e.~~

units. Supporting documentation includes evidence the units have long-term vacancy issues, notwithstanding due diligence in marketing (e.g., census tract data on declining population in the jurisdiction; units located in an isolated area with limited access to transportation and infrastructure; high turnover rates). On a case-by-case basis, HUD may require a PHA to submit a market analysis or HUD may perform one.

b. 2. Improved Efficiency/Effectiveness Through Off-Site Development of Low-Low- income Housing: ~~(24 CFR 970.17(b). Retention of the units is not in the best interests of residents or the PHA because).~~ The disposition allows for the development of other properties that will be more efficiently or effectively operated as low-income housing projects. For purposes of this notice, “low-income housing” is limited to public housing units, ~~project-project-~~based voucher (PBV) units, or Section 8 PBRA units and does not include housing where tenants are using tenant-based Section 8 Housing Choice Vouchers (HCV). Development may include acquisition (with or without rehabilitation) or new construction. PHAs must demonstrate why the replacement low-income housing units are preferable (e.g., more energy efficient; better unit configuration; better location in terms of transportation, jobs, or schools; furthers minority or economic de-concentration where units are relocated from an area of minority concentration to one that is not concentrated). The units being acquired, developed, or rehabilitated must be off-site. In providing the statement justifying the proposed disposition pursuant to 24 CFR 970.7(a)(5), PHAs explain their intention to acquire, develop, or rehabilitate low-income housing projects. For public housing units, the PHA submits the development proposal to HUD under 24 CFR part 905. For PBV units, the PHA submits an “intent to project-base” notification to the Field Office.

2. 3. Best Interests and Consistency: ~~24 CFR 970.17(c). A PHA certifies that it has determined the disposition to be appropriate (24 CFR 970.17(c)). A PHA~~ has determined the disposition to be appropriate for reasons that are in the best interests of the residents and the PHA, ~~consistent with the PHA goals of the PHA and the PHA Plan plans;~~ and ~~are~~ otherwise consistent with the 1937 Act. In making such a certification, a PHA considers ~~the tremendous its~~ need for public housing units ~~nationwide~~, the purpose and mandate of the 1937 Act, the mission and obligations of the PHA to maintain and operate projects as decent and safe housing in accordance with its ACC, and other tools available to the PHA to preserve and reposition its public housing stock. SAC applications are reviewed on a case-by-case basis. Below are examples ~~of what HUD generally approves under this section:~~

a. Unit obsolescence. The units are obsolete as to physical condition in accordance with applicable demolition criteria described at section 4)A.1 of this notice.

b. **Very Small PHAs.** The PHA owns and operates 50 or fewer public housing units under its ACC and has determined that it is in the best interests of the residents and PHA to close out its Section 9 public housing program in accordance with Notice PIH 2016-23.c. ~~PHA to close out its Section 9 public housing program in accordance with Notice PIH 2016-23.c. —~~ **Comprehensive Rehabilitation or Replacement through Rental Assistance Demonstration (RAD).** ~~The PHA is converting at least 75 percent of the public housing units within a project (as project is defined by RAD) under RAD and meets the requirements of the RAD Final Implementation Notice REV-3, H-2017-3, and is replacing the units proposed for disposition (up to 25 percent of the public housing units within a project) with Section 8 project-based voucher (PBV) assistance in accordance with 24 CFR part 983. The~~

d. —

~~aggregate number of replacement units (RAD and PBVs) must meet the RAD “substantial conversion of assistance” requirements. To qualify, the project-based Section 8 units (RAD and PBV) must be newly constructed or substantially rehabilitated (defined for purposes of this clause as hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, in excess of 60% of the Housing Construction Costs as published by HUD for a given market area) without using 9% Low Income Housing Tax Credits.~~

PHA to close out its Section 9 public housing program in accordance with Notice PIH 2016-23.

- c. ~~e~~-Improved Efficiency/Effectiveness Through On-Site Development of ~~Low-~~ Low- income Housing- (24 CFR 970.17(c)).** The requirements of Section ~~3)A.2~~ 3)A.1.b of this notice apply except that the replacement low-income housing units are located ~~on-on-~~ site. The replacement low-income housing units may be newly constructed or the same public housing units after modernization (~~rehabilitation~~).⁵rehabilitation).⁴
- d. ~~f~~-Scattered Site Units.** Due to distance between units and lack of uniformity of systems (e.g. HVAC, utilities)- the PHA demonstrates an unsustainability to operate and/or maintain the units as public housing. For purposes of this notice, scattered site units generally mean units in non-contiguous buildings with four or fewer total units.
- e. ~~Disposition~~ Blending Section 18 Disposition Approvals with Rental Assistance Demonstration (RAD) Conversion.** The PHA is converting a portion of the public housing units within a Converting Project and is replacing the units proposed for disposition with project-based Section 8 assistance within the Covered Project, as the terms “Converting Project” and “Covered Project” are defined in the RAD Final Implementation Notice Revision 4 (H-2019-09 PIH-2019-23 (HA)), as amended from time to time (the “RAD Notice”). The aggregate number of replacement units (RAD and project-based Section 8) must meet the RAD “substantial conversion of assistance” requirements.

(1) RAD/Section 18 Construction Blend. The percentage of units eligible for disposition within the Converting Project is based on the hard construction costs, including general requirements, overhead and profit, and payment and performance bonds, proposed for the new construction or rehabilitation of the Covered Project. To be eligible, the proposed transaction may not use 9% Low Income Housing Tax Credits. The following sets forth the percentage of units eligible for disposition within the Converting Project based on the level of construction activity:

- (a) If the hard construction costs are equal to or exceed ninety percent (90%) of the Housing Construction Costs as published by HUD for the given market area, at the PHA’s discretion up to sixty percent (60%) of the units in the Converting Project may be disposed of under Section 18. For high-cost areas, defined as those where HCC exceeds 120% of the national average,⁵ at the PHA’s discretion up to eighty percent (80%) of the units in the Converting Project may be disposed of under Section 18.**

B.⁴ If the PHA is proposing to dispose of public housing units to allow the same units to be modernized (rehabilitated) under mixed-finance public housing development rules of 24 CFR part 905, the PHA submits the SAC application under the “MF-MOD” disposition application type in IMS/PIC. This ensures Capital Fund and Operating Fund subsidy are accurate.

⁵To calculate the national average HCC and the HCC for each jurisdiction, HUD used the average of the 2-BR HCC

[for Elevator and Walk-up structures.](#)

(b) If the hard construction costs are equal to or exceed sixty percent (60%) but are less than ninety percent (90%) of the Housing Construction Costs as published by HUD for the given market area, at the PHA's discretion up to forty percent (40%) of the units in the Converting Project may be disposed of under Section 18.

(c) If the hard construction costs are equal to or exceed thirty percent (30%) but are less than sixty percent (60%) of the Housing Construction Costs as published by HUD for the given market area, at the PHA's discretion up to twenty percent (20%) of the units in the Converting Project may be disposed of Section 18.

(2) RAD/Section 18 Small PHA Blend. For any PHA with 250 or fewer public housing units under its ACC, at the PHA's discretion up to eighty percent (80%) of the units in a Converting Project may be disposed of under Section 18. The PHA is not required to remove all of its remaining public housing units through a Small PHA Blend transaction. However, to be eligible for the Small PHA blend, the PHA must submit to HUD a feasible repositioning plan approved by the PHA's board of commissioners and acceptable to HUD that removes all of a PHA's public housing ACC units, reflects that the PHA will not develop additional public housing units under otherwise available Faircloth authority, and will not transfer that Faircloth authority to another PHA and will result in the closeout of the PHA's Section 9 public housing program and termination of its Section 9 ACC. Any PBV contract created under this subparagraph must be administered by an HCV contract administrator with at least 250 HCV units under its HCV ACC prior to creation of such PBV contract.

Please see Section 1.5.B of the RAD Notice relating to the applicability of RAD relocation requirements to residents of the Section 18 units and Section 1.6 of the RAD Notice relating to the applicability of RAD requirements to non-RAD units to facilitate the uniform treatment of residents where specified in the RAD Notice.

RAD/Section 18 blends are primarily processed by the Office of Recapitalization and are subject to RAD requirements and processes related to Financing Plan submission requirements, underwriting, DOT releases, terms of the disposition (e.g., treatment of proceeds), and placement of a long-term use agreement at the Covered Project. Notwithstanding processing by the Office of Recapitalization, in addition to RAD requirements, the PHA must also comply with Section 18 submission requirements.

B. Justification Criteria of Non-Dwelling Buildings and Vacant Land. The PHA certifies, by narrative statement and supporting documentation, that disposition of non-dwelling buildings or vacant land meets the criteria of 24 CFR 970.17(d) because the property exceeds the needs of the project after the date of full availability (DOFA); or the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

~~⁵If the PHA is proposing to dispose of public housing units to allow the same units to be modernized (rehabilitated) under mixed finance public housing development rules of 24 CFR 905, the PHA submits the SAC application under the “MF MOD” disposition application type in IMS/PIC. This ensures Capital Fund and Operating Fund subsidy are accurate.~~

C. Commensurate Public Benefit. In accordance with 24 CFR 970.19, dispositions proposed below FMV require a finding of commensurate public benefit, which HUD determines on a case-by-case basis. Generally, the disposed property is developed for affordable housing purposes serving low-income families (incomes at or below 80% of area median). Such affordable housing may include, but is not limited to, public housing, project-based Section 8 housing, and housing developed with low-income housing tax credits (LIHTCs). HUD encourages PHAs to maximize economic opportunities available to residents (as described in section 6)F.5 of this notice) when requesting HUD approval of a below FMV disposition based on commensurate public benefit. PHAs should specifically describe these economic opportunity benefits in their SAC applications as part of the commensurate public benefit description. To ensure compliance with a HUD-approved commensurate public benefit, a use restriction may be required (such that it survives foreclosure of mortgages and other liens) and publicly recorded in the land records. As ~~the~~ part of the SAC application, a PHA may propose a preferred form of use restriction (e.g., LIHTC extended use agreement, HOME agreement, reversion clause in transfer documents, provision in ground lease, separate use agreement). The use restriction must be in a form acceptable to HUD. Field Offices will not release the Declaration of Trust/Declaration of Restricted Covenants (DOT/DORC) (HUD-52190) (4/2018) (or previous versions) until the PHA evidences compliance.

4) Demolition.

A. Justification Criteria. HUD reviews demolition requests in accordance with the following ~~criteria:~~⁶criteria: (1) the project or portion of a project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; and (2) in the case of an application for demolition of a portion of a project, the demolition will help to ensure the viability of the remaining portion of the project.

- 1. Physical Condition**~~:-~~ (24 CFR 970.15(b)(1)(i) and (b)(2)). PHAs must demonstrate substantial physical issues of the buildings/units (~~i.e.g.~~, critical structural issues, deficiencies in major systems, deterioration due to prolonged deferred maintenance) that cannot be corrected in a cost-effective manner. PHAs may submit Physical Needs Assessments (PNAs), government inspections (including condemnation orders), and/or independent architect or engineer’s reports as supporting ~~documentation:~~⁷documentation.⁶ HUD may consider other available information, including REAC scores; Capital Fund Program Five Year Action Plans, Energy Performance Contracting (EPC) information; and/or on-site inspections by HUD staff. To support a certification of physical obsolescence and ~~cost-~~cost-ineffectiveness, the PHA submits

1.⁶ In accordance with 24 CFR 905.314(g), PHAs are permitted to rehabilitate and address the capital needs of projects provided the rehabilitation costs do not exceed 90% of total development cost TDC. Accordingly, per 24 CFR 970.15(b)(2), if a project's rehabilitation costs are between 57.14% (or 62.5% if elevator) and 90% of TDC, the PHA may either voluntarily pursue a demolition or disposition action for the project or may rehabilitate the project with Capital Funds. However, if rehabilitation costs for a project exceed 90% of TDC, the PHA's only choice is to pursue a demolition or disposition or use funds other than Capital Funds to address the project's capital needs.

form HUD-52860-A (4/2018) and HUD-52860-B (4/2018), along with a list of specific and detailed work-items that require rehabilitation or repair, preferably prepared by an outside engineer or architect, in two components: scope of work and cost-estimates. The following generally applies to the scope of work:

- a. Estimates based on the standards outlined in the most recent International Building Code (IBC) and National Fire Protection Association (NFPA) 5000 standards. PHAs may include local code requirements (i.e.g., fire codes; requirements for natural disasters such as flooding or wildfires);
- b. Building systems (e.g., HVAC, plumbing, electric), external amenities (e.g., roofs, doors, windows), and internal amenities (e.g., kitchens, bathrooms, flooring) limited to those that address immediate capital needs for a maximum of three years. Replacement costs are restricted to the remaining useful life of an item for three years or less. Actual service life may depend on initial quality of the item, local environmental factors, use/abuse, and levels of routine maintenance. Age of an item alone is not evidence of need to repair or replace. Each item is individually estimated and may reference life cycle values per the R.S. Means Facilities Maintenance and Repair Cost Data book;
- c. Underground utilities (e.g., sewer, water, gas, electric), regardless of distances, provided the PHA owns the utility and evidences the need for replacement;
- d. Mitigation costs of asbestos, lead-based paint, or other environmental issues supported by reports submitted with the SAC application;

~~⁶PHAs do not need demolition approval from HUD if PHAs are proposing to dispose of public housing units or other property before such property will be demolished (e.g., by a LIHTC acquiring entity). Instead, PHAs must comply with the disposition criteria in Section 3 of this notice.~~

~~⁷In accordance with 24 CFR 905.314(g), PHAs are permitted to rehabilitate and address the capital needs of projects provided the rehabilitation costs do not exceed 90% of total development cost TDC. Accordingly, per 24 CFR 970.15(b)(2), if a project's rehabilitation costs are between 57.14% (or 62.5% if elevator) and 90% of TDC, the PHA may either voluntarily pursue a demolition or disposition action for the project or may rehabilitate the project with Capital Funds. However, if rehabilitation costs for a project exceed 90% of TDC, the PHA's only choice is to pursue a demolition or disposition or use funds other than Capital Funds to address the project's capital needs.~~

- e. Structural defects when supported by reports from a licensed professional engineer;
- f. Accessibility improvements for persons with mobility, vision, hearing or other impairments, provided improvements are consistent with standards, regulations, and other requirements under Section 504 of the Rehabilitation Act of 1973 (including the Uniform Federal Accessibility Standards (UFAS)), Fair Housing Act, Americans with Disabilities Act, other applicable federal authorities, state or local requirements that exceed federal baseline requirements, and accessibility requirements in remedial agreements or orders;
- g. Imminent health and/or safety issues even if such costs are otherwise not eligible

provided the PHA provides supporting documentation from an independent party evidencing the occurrence and resulting health and/or safety risks.

HUD reserves the right to disallow items in a scope of work if HUD determines there are more cost-effective alternatives to address the rehabilitation or replacement needs. If PHAs complete major capital work after the scope of work is prepared, the PHA must include a description of that work in the SAC application. HUD generally does not allow the following costs to be included in a rehabilitation scope of work:

- a. Work associated with enhancements or improvements of working systems or fixtures at the project (including energy efficiency “green” improvements);
- b. Amenities not currently existing at the project (e.g., solar panels; ~~tank-less~~ tankless water heaters; trash enclosures, washer/dryer hook-ups; garbage disposals; central air- conditioning; addition of new porches);
- c. Work items that address a project’s needs beyond three years;
- d. Local code compliance if the building code requirements are otherwise not triggered by the rehabilitation/repair;
- e. Landscaping or other site work beyond five feet of the exterior walls of a building;
- f. Upgrading utility lines that are otherwise in working condition;
- g. Work items associated with site improvements and appurtenances (e.g., parking lots, security cameras, playgrounds, community centers), even if those site improvements or appurtenances exist and in need of repairs; and
- h. Replacing PHA personal property (e.g., replacing appliances or other removable fixtures such as refrigerators, ovens, and window treatments).

The following generally applies to cost-estimates of the eligible scope of work items:

- a. Total development costs (TDC) comparisons per HUD-posted costs for the year the rehabilitation estimate is made. See 24 CFR 905.314.
- b. R.S. Means cost index, Marshall and Swift cost index, or other accurate and reliable cost-estimates (e.g., actual and competitive bids).
- c. Hard construction costs (HCC) as defined in 24 CFR part 905 (including existing items inside a building or within five feet of the exterior walls; and costs to repair landscaping damaged due to rehabilitation).

PHAs may not include additional costs attributable to inflation or “cost escalation.” For example, if a PNA completed in 2017 indicates a roof replacement is necessary in 2019, the PHA must use current estimated costs without any escalation, cost adjustments or other means of adjusting for inflation for work projected to be undertaken/completed in 2019. Instead, the PHA uses 2017 cost-index information.

The following fees are maximum amounts for soft costs associated with public housing ~~rehabilitation.~~⁸ rehabilitation.⁷ PHAs may flexibly determine costs for each item provided the total cost does not exceed the maximum. Percentages are based on hard construction and will vary based on the project size:

- a. Construction contingency: 7.5 percent
 - b. ~~Architectural/Engineer's~~ Architectural/engineer's design and construction monitoring fees: 5.5 percent
 - c. Profit and overhead fees for specialty ~~sub-contractor~~ subcontractor (e.g. HVAC, ~~Electric~~ electric, plumbing, elevator): 10 percent
~~Plumbing, Elevator): 10 percent~~
 - d. General ~~Condition~~ condition fees (e.g. ~~Permit~~, ~~Insurance~~ permit, ~~Bonds~~ insurance, bonds): 5 percent
 - e. PHA administrative costs: 2 percent
2. **Location**: (24 CFR 970.15(b)(1)(ii) and (b)(2)). PHA demonstrates the location of the units causes obsolescence, including physical deterioration of the neighborhood; change in neighborhood from residential to industrial or commercial; or environmental conditions which jeopardize the suitability of the site, ~~or a portion of the site, or the~~ and its housing ~~jeopardize the structures for~~ residential use. The cost ~~test~~ for obsolescence based on location includes the PHA's cost to cure the obsolescence (e.g., buffering nearby industrial or commercial development; mitigating environmental conditions) and whether these costs exceed applicable TDC percentages. In some cases, there may be no way to cure the obsolescence, regardless of cost (e.g., project is in a Federal Emergency Management Agency (FEMA) designated floodway). In other cases, the obsolescence may be curable with a mitigation cost (e.g., ~~flood~~ flood-proofing and ~~FEMA~~ flood insurance for designated floodplains).
3. **Other Factors**: (24 CFR 970.15(b)(1)(iii) and (b)(2)). PHA demonstrates factors impacting the marketability, usefulness, or management of the units that seriously impede operations for residential use supported by third party documentation. The cost ~~test~~ for obsolescence based on other factors includes the PHA's cost to cure the cause and whether these costs exceed applicable TDC percentages. In some cases, curing the obsolescence is not possible regardless of costs. In cases where the obsolescence may be curable, include the PHA's cost of due diligence in marketing and to cure obsolete factors (e.g., cost to add a second bathroom to units with a high number of bedrooms).

B. De Minimis Demolition. In any 5-year period, a PHA may demolish the lesser of 5 dwelling units or 5 percent of the total public housing dwelling units without the need to obtain HUD approval under 24 CFR part 970, provided the resulting space is used to meet the service or other needs of the residents or the PHA determines the unit(s) are beyond

repair. Demolition criteria of 970.15 ~~does~~do not apply to *de minimis* demolitions. Prior to

B.7 HUD may consider higher percentages for soft costs for compelling reasons on a case-by-case basis.

demolishing units under this authority, the PHA must submit information to HUD via IMS/PIC, including a description of the proposed units and other items required by 24 CFR 970.7(a)(1), (2), (12), (13), and (14).

~~⁸ HUD may consider higher percentages for soft costs for compelling reasons on a case-by-case basis.~~

5) Eligibility and Application Process for Tenant-Protection Vouchers (TPVs).

A. TPV Eligibility. As part of HUD’s approval of a SAC application, a PHA may be eligible to receive Section 8 HCV assistance from HUD in the form of TPVs. The issuance of TPVs to a PHA does not occur with SAC approval of an application. Instead, the PHA must apply separately for TPVs in accordance with the current PIH funding notice for the HCV program.

HUD determines a PHA’s TPV award based on the relevant appropriations and other HUD-issued guidance (including the applicable year’s HCV funding notice). HUD’s approval of the SAC application indicates the maximum number of both relocation and replacement TPVs that a PHA ~~is~~ may be eligible to receive.

~~Notice PIH 2018-09 states a PHA’s final replacement TPV award for Public Housing actions is based on the occupancy of the units at the time HUD approves the SAC application. A PHA’s replacement TPV will not change unless the PHA’s redevelopment plan has been revised to reduce the number of eligible replacement TPVs. See Section 6.C.1.b.ii.~~

~~Notice PIH 2018-09 states a PHA’s final relocation TPV award for Public Housing actions is based on the occupancy of the units at the time the TPV application is submitted to HUD. This number may be less (but not more) than the maximum number of relocation TPVs identified in HUD’s approval of the SAC application. See Section 6.C.1.b.i.~~

Based on limited availability of TPV funding, HUD is limiting the maximum TPV awards for dispositions based on improved efficiency or effectiveness under Section ~~3) A.2 or 3) A.3.d 3) A.1.b or 3) A.2.c~~ of this notice to 25 percent of the occupied units at the project. However, even if a PHA is not eligible to receive TPVs in a SAC-approved disposition, the PHA must still comply with relocation requirements of 24 CFR 970.21.

B. TPV Application Process. A PHA must submit the following to the Field Office:

1. Name and IMS/PIC number for the units approved in the SAC application. Number of TPVs (both relocation and replacement) requested which must equal or be less than the maximum number of TPVs identified in the SAC approval and address relevant appropriation limits including HUD TPV guidance. See Notice PIH 2017-10 (or the current replacement PIH funding notice for the HCV program) concerning the differences between replacement and relocation TPVs.
2. Form HUD-52515 (Voucher Funding Application). If lease-up covers more than one calendar year, the PHA must submit a separate Form HUD-52515 for each calendar year.
3. Leasing schedule identifying the number of TPVs leased on a month-to-month basis. If

lease-up covers more than one calendar year, the PHA must submit separate leasing schedules for each calendar year. If the PHA is approved for both replacement and relocation TPVs as part of the same SAC approval, the PHA must submit separate leasing schedule(s) for each type of TPV.

4. SAC application approval as a PDF copy, signed and dated.

5.

5. ~~6.~~ If the PHA is a Public Housing-only PHA (and therefore cannot receive or administer TPVs), the name and PHA code of the PHA that has agreed to administer the TPVs, along with an agreement letter from that PHA. HUD does not allow Public Housing-only PHAs to create Section 8 HCV programs based solely on TPV eligibility.

The Field Office conducts a threshold review of the TPV request prior to sending the request to HUD's Financial Management [Division \(FMD\) for processing. HUD's Financial Management Center \(FMC\)](#) ~~HUD's FMC~~ notifies PHAs of final TPV awards.

6) Other Requirements.

A. Existing Financial Transactions. PHAs with an approved transaction through the Capital Fund Financing Program (CFFP), Section 30 (including PHA Mortgaged Transaction (PMT)), Energy Performance Contracting (EPC), or Operating Fund Financing Program (OFFP) must comply with additional instructions provided by HUD regarding such financing and may not take any steps to implement a SAC-approved application without receiving confirmation from HUD that all applicable requirements of the financing are satisfied. PHAs must certify an existing financial agreement is not at risk because of the proposed demolition or disposition action.

B. Operating Fund Accuracy. Updating Days to Relocation. As part of the SAC application, PHAs include an estimated number of days from a SAC-approved application that it plans to start relocation. HUD recognizes relocation plans sometimes change. However, because HUD relies on relocation information to determine Operating Funds, PHAs are responsible to ensure the relocation information remain reasonably accurate. If days to relocation in a SAC application is not reasonably accurate, Asset Repositioning Fee (ARF) payments under 24 CFR 990.190 will be affected. See Notice PIH 2017-22 on how to update relocation dates.

C. Re-occupying Units Proposed for Demolition or Disposition. 24 CFR 970.25(a) states a PHA should not re-rent units at turnover while HUD is considering a SAC application. However, due to community needs or for other reasons consistent with its PHA Plan, a PHA may decide it is in the best interests of the PHA, its residents, and the community to re-occupy vacated units that are under SAC review. If the PHA proposes demolition or disposition because units are structurally unsound, located in a floodway, or otherwise uninhabitable, the PHA cannot reoccupy the units. PHAs cannot re-occupy units after issuance of the 90-day relocation notice.

D. Reporting Requirements. Within seven days of completion of the demolition or disposition (e.g., execution of the sale or lease contract for disposition), PHAs must report the action in IMS/PIC. On a case-by-case basis, HUD may require other reporting information.

E. False Certifications and HUD Enforcement. Any person knowingly presenting a false, fictitious or fraudulent statement or claim in a HUD matter, including certifications and supporting documentation submitted with SAC applications, ~~are~~ is subject to criminal penalties, civil liability, or administrative actions which HUD may prosecute. HUD may pursue debarment/suspensions of principals and PHAs, and any enforcement actions available including, but not limited to, injunctive relief and other equitable remedies.

F. Civil Rights Requirements. This notice does not modify a PHA's fair housing, civil rights, or accessible housing obligations. It does clarify those obligations with respect to public housing demolition/disposition under Section 18.

1. PHA Certification. As part of the SAC application, PHAs certify they will carry out the removal action in compliance with all applicable civil rights requirements, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, all regulations implementing these authorities, other applicable Federal, State, and local civil rights laws, and the duty to affirmatively further fair housing. A PHA's certification means that it will fulfill the requirements set out in HUD regulations found at Title 24 of the Code of Federal Regulations, including regulations in place at the time of this certification, and any subsequently promulgated regulations governing the ~~Americans with Disabilities Act of 1990 and the duty to affirmatively further fair housing. A PHA's certification that it will affirmatively further fair housing means:~~ (1) ~~for a PHA that has completed an Assessment of Fair Housing (AFH) which has been accepted by HUD, that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing;~~ or (2) ~~for a PHA that is not yet required to and has not submitted an AFH, that it must continue complying with the requirements that existed prior to August 17, 2015, with respect to affirmatively furthering fair housing. PHAs also certify that.~~ The PHA is always responsible for understanding and implementing the requirements of HUD regulations and policies, and has a continuing obligation to affirmatively further fair housing in compliance with the 1968 Fair Housing Act, the Housing and Community Development Act of 1974, The Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998. (See 42 U.S.C. 3608, 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), and 1437C- 1(d)(16)). PHAs also certify that, if HUD approves the SAC application, subsequent implementation complies with all applicable civil rights requirements, including environmental determinations for environmental justice.

2. ~~3.~~ HUD Civil Rights Review. HUD's Office of Fair Housing and Equal Opportunity (FHEO) conducts a civil rights review of SAC applications, which may include applications for non-dwelling property. Pursuant to 24 CFR 970.7(a)(17), HUD may request additional information, including information about the PHA's compliance with nondiscrimination requirements in relocations under 24 CFR 970.21(a) and the PHA's affirmatively furthering fair housing certification under 24 CFR 903.7(o).

3. ~~4.~~ Disclosure of Remedial Orders and Compliance Agreements. In its SAC application, the PHA provides a certification that the demolition or disposition does not violate any remedial civil rights order or agreement, voluntary compliance agreement, final judgment, consent decree, settlement agreement, or other court order or agreement (per 24 CFR § 970.9(a)(16)). In addition, the PHA states whether it is operating under any federal, state, or local remedial order, compliance agreement, final judgment, consent decree, settlement agreement or other court order or agreement, including but not limited to those related to a fair housing or other civil rights finding of noncompliance. If the PHA is operating under such a document, it must provide a citation to the document and attach a narrative description explaining how the proposed demolition or disposition is consistent with such document.

4. 5. Federal Labor Standards and Economic Opportunity. PHAs using HUD funds for demolition or disposition must comply with all applicable federal labor standards of ~~section~~ [Section 12](#) of the 1937 Act (42 U.S.C. 1437j) (Davis-Bacon) and requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C 1701u), as amended. Activities include but are not limited to demolition and resident relocation. Under Section 3 and 24 CFR ~~135~~ [part 75](#), recipients of certain HUD financial assistance must provide employment, training, and economic opportunities to the greatest extent feasible ~~to Section 3 residents or business concerns. Recipients of HUD funds have Section 3 obligations regardless of the amount of funds (24 CFR 135.3(a)(3)).~~

to Section 3 residents or business concerns. Recipients of HUD funds have Section 3 obligations regardless of the amount of funds (see 24 CFR 75.3).

5. ~~A~~**Accessible Resident Consultation for Persons with Disabilities and Persons with Limited English Proficiency.** To ensure individuals with disabilities have reasonable opportunities to consult on the SAC application, PHAs must ensure communications and materials are accessible and in compliance with Section 504 of the Rehabilitation Act of 1973, 24 CFR 8.6, ~~49 CFR 24.5,~~ and the Americans with Disabilities Act of 1990, ~~and 28 CFR 35 and 36~~parts 35.160-35.163. This includes ensuring written and oral communications, including resident meetings, are provided in appropriate alternative formats as needed, e.g., Braille, audio, large type, accessible electronic communications, assistive listening devices, sign language interpreters, ~~computer-computer-assisted real time transcription of meetings, Brailled materials, large print documents, accessible web-based and email communications, and when providing materials via the Web. In selecting locations for consultation with residents, the PHA must provide equal access for persons with disabilities, conducting sessions at locations that are physically accessible to persons with disabilities, including~~ assisted real time transcription of meetings, brailled materials, large print documents, accessible web based and email communications, and when providing materials via the Web. In selecting locations for consultation with residents, the PHA must provide equal access for persons with disabilities, conducting sessions at locations that are physically accessible to persons with disabilities, including individuals who use wheelchairs. Individuals with disabilities must receive services in the most integrated setting appropriate to their needs, meaning individuals who use wheelchairs. Individuals with disabilities must receive services in the most integrated setting appropriate to their needs, meeting the needs of qualified individuals with disabilities that enables interactions to the fullest extent possible. The PHA is guided by the goal of maximizing participation in an integrated setting so that residents with disabilities and residents without disabilities may hear and consider each other's views. Priority shall be given to on-site accessible locations (e.g., TV rooms or informal gathering places) even if to do so requires multiple sessions with smaller groups of residents. Title VI of the Civil Rights Act of 1964 and regulations at 24 CFR part 1, require PHAs to take reasonable steps to ensure meaningful access to their programs and activities for persons who have limited ability to read, speak, or understand English (i.e., individuals who have limited English proficiency or LEP persons). Written materials provided in English are to be provided in regularly encountered languages among the residents. PHAs may need to provide interpreters to communicate between different languages to ensure LEP persons have meaningful access. PHAs hold meetings in languages other than English to provide direct communication and participation.

7) 6) Relocation of Residents. If residents are relocated due to a demolition and/or disposition, the PHA must follow relocation requirements at 24 CFR 970.21, and not the relocation requirements at 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended. However, if subsequent acquisition, rehabilitation or demolition carried out with HUD funds or carried out with other HUD-funded activities causes residents to relocate, the URA may apply to those relocations. Additionally, if CDBG or HOME funds are used in the demolition or with conversion of lower-

income dwelling units to a use other than lower-income dwelling units, the project may be subject to section 104(d) of the Housing and Community Development Act of 1974, including relocation assistance and one-for-one replacement provisions under 24 CFR part 42 subpart C.

8) 7) Technical Assistance. Contact SACTA@hud.gov.

9) 8) Paperwork Reduction Act. Information collection requirements contained in this notice are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The OMB control numbers are 2577-0029-, [2502-0612](#) and 2577-0075.

/s/

Dominique Blom
General Deputy Assistant Secretary for Public and Indian
Housing

Summary Report	
Title	compareDocs Comparison Results
Date & Time	1/19/2021 1:02:56 PM
Comparison Time	7.91 seconds
compareDocs version	v5.0.100.42

Sources	
Original Document	[#D1065964.PDF] [v1] PIH Notice 2018-04.PDF
Modified Document	[#D1065957.PDF] [v1] PIH Notice 2021-01.PDF

Comparison Statistics	
Insertions	78
Deletions	51
Changes	87
Moves	44
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	260

Word Rendering Set Markup Options	
Name	Standard
<u>Insertions</u>	
Deletions	
<u>Moves</u> / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	Redline
Character Level	Word	False
Include Comments	Word	False
Include Field Codes	Word	True
Flatten Field Codes	Word	False
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
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Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print