

U.S. Department of Housing and Urban Development
PUBLIC AND INDIAN HOUSING

Special Attention of:

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PHAs/IHAs; Regional Administrators;
Directors, Offices of Public
Housing; Directors, Offices of
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Management Corporations

Subject:: Requirements for HUD Approval of Taking of Public
Housing Property by Eminent Domain

1. Purpose. This Notice sets forth the requirements for HUD approval of the taking of public housing property (this includes the property of an Indian Housing Authority) by another public body using eminent domain authority.
2. Background. Takings under eminent domain are exempt from the requirements of Section 18 of the U.S. Housing Act of 1937, as amended (Act), 24 **CFR** 905, Subpart **M**, and 24 **CFR**, Part 970; therefore, it is important to ensure that such requests meet all the HUD established requirements for HUD approval where eminent domain is used.

In addition, there is some misunderstanding regarding actions required to obtain HUD approval under the eminent domain procedure, and confusion regarding the meaning of the term "friendly taking."

3. Definition of Eminent Domain. Eminent domain is the power of a governmental body to take private property for public use upon compensating the owner. Numerous public and "quasi-public" agencies, such as airport authorities, highway commissions, community development agencies, and utility companies are authorized the use of eminent domain. When property owned by a public housing agency/Indian Housing Authority (HA) is sought by public bodies that have eminent domain authority, HUD approval is necessary. Taking under eminent domain where all

parties agree to a settlement is sometimes referred to as a "friendly taking." This agreement among the parties, however, does not negate the need to satisfy the HUD established requirements reiterated in the following paragraph, Use of Eminent Domain.

4. Use of Eminent Domain. For the purpose of exemption from the requirements under Section 18 of the Act, 24 CFR 905, Subpart M, and 24 CFR Part 970, the Office of General Counsel (OGC) has ruled that HUD may not consider a taking of public housing under the eminent domain procedure unless:
 - a. The taking body has been authorized the use of eminent domain under its State or tribal law, and
 - b. The taking body evidences its intent to use its power of eminent domain by taking the first step required under its State, or tribal law for an eminent domain proceeding. The OGC has ruled that having the power of eminent domain, without having taken some action to commence the taking, is not sufficient basis for HUD to approve the taking under the eminent domain procedure. Only the first step must be taken. If the parties involved can reach a settlement after that first step is taken, it is not necessary to complete the legal proceedings.
5. Non-Applicability of Section 18. Where eminent domain authority is used, Section 18 of the U.S. Housing Act of 1937, as amended, does not apply to property owned and operated by HAs.
6. HUD Approval Required. HUD approval is required for the taking of HA-owned property under eminent domain due to the Federal interest in the property under the Annual Contributions Contract, and as specified in the Declaration of Trust. The Regional Administrator may approve the sale or transfer of such property if the following conditions are satisfied by the HA and the other public body seeking to take the public housing property:
 - a. Replacement housing for any units taken shall be provided on at least a one-for-one basis, and paid for by the "taking" public body or the public body will pay the fair market value of the property, whichever value is higher. Replacement units must be

of comparable size and unit configuration as those taken, except where the HA can demonstrate, and HUD concurs, that there is a lack of need for the unit configuration or size or configuration of units taken, or a greater need for another size unit. Replacement units must meet HUD's construction/acquisition standards for public housing new development, or where applicable, the Indian Housing Development construction/acquisition standards. The replacement housing may be provided through either direct replacement of units, construction/acquisition and transfer to the HA under **the turnkey** method, or sufficient funds provided to the HA to allow it to construct or acquire the replacement units itself. After HUD approval, the ACC for the original project shall be amended to substitute the replacement units, thereby making them eligible for operating subsidy under the Performance Funding System. The Cooperation Agreement, where specific sites are identified, and the Declaration of Trust shall be amended to reflect the substitute units;

b. Replacement of non-dwelling facilities, such as community buildings, office space, basketball courts and maintenance facilities, shall be provided for, as well as any similar non-dwelling space which is lost to the HA and to its residents through the taking. Replacement structures may be provided through either direct replacement, transfer to the HA under the turnkey method or sufficient funds provided to the HA to allow it to develop or acquire replacement structures itself or fair market value, whichever is higher;

C. Fair market value, as supported by appraisals, including severance damages, shall be provided for any vacant property taken. The correction of any damage to the remaining portion of the project resulting from the taking, and any subsequent **construction**, must also be paid for by the public body exercising the taking, in addition to payment of the fair market value for the vacant property;

d. Resident consultation shall be provided for in accordance with paragraph 2-1 of HUD Handbook 7486.1. There is no requirement that resident

organizations be given-the right to purchase, as is the case under Section 18 of the Act;

- e. Local consultation shall be provided for in accordance with paragraph 2-2 of HUD Handbook 7486.1;
- f. Relocation costs incurred as a result of the taking shall be paid for by the public body acquiring the property. When the taking is for a federally assisted project, any resulting displacement is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). HUD Handbook 1378, Tenant Assistance, Relocation and Real Property

Acquisition, describes the assistance which must be provided to persons displaced by a project that is subject to the URA. Such assistance includes advisory services (Chapter 3 of Handbook 1378), payment for moving and related expenses (Paragraph 3-2 of Handbook 1378) and replacement housing assistance (Paragraph 3-4 of Handbook 1378).

It is anticipated that residents to be displaced will be offered the opportunity to relocate to comparable public housing units. In such cases, there will be no replacement housing payment since the cost of the replacement housing will meet the financial means test under Paragraph 1-6g of Handbook 1378. To ensure that timely offers of comparable replacement housing are provided, it is important for the acquiring agency to provide appropriate written notices to the residents to be displaced (see Paragraph 2-3 of Handbook 1378).

- g. Environmental and historic preservation requirements shall be addressed in accordance with paragraph 2.5 of HUD Handbook 7486.1.

Assistant Secretary for
Public
and Indian Housing