This document provides guidance on how establishing a separate legal entity (owner entity) may further a PHA's repositioning goals. For purposes of this document, owner entity means an entity, recognized under state law, that is legally separate from the PHA.

Why create an owner entity? There are several reasons why a PHA might want to create an owner entity:

- **To raise debt or equity.** A lender or investor will likely require the creation of a "single-asset entity" to own the asset. By creating an owner entity, the PHA satisfies that requirement while still maintaining control over the asset.

- **Because disposition is required**. The disposition process (Section 18) requires the transfer of a public housing asset. A PHA can satisfy this requirement, but still control the property, by transferring the property to an owner entity.

- **For Housing Assistance Payment (HAP) contract purposes**. An entity cannot enter into a contract with itself. If a PHA will project-base vouchers that it administers at a project that it owns, it may therefore wish to establish an owner entity to serve as the project owner for contract purposes.1 Such an arrangement is not required, however; if the PHA retains ownership of the project, it may enter into an arrangement with a separate legal entity (created by the PHA or not) that has the legal right under state law to lease the project's units. As long as such an arrangement is in place, the separate legal entity may sign the HAP contract as the owner without having an ownership interest in the project.

- **To obtain a particular grant or type of financing**. Some development grants or financing opportunities are limited to non-profits. For example, Community Housing Development Organizations (CHDOs) (not-for-profit organizations) qualify for set-aside funding under the HOME Partnership Program.

- **PHA preference and local laws**. Some PHAs simply prefer to own a former public housing asset under an owner entity. For instance, in some jurisdictions, only not-for-profit corporations are eligible to for certain local property tax exemptions.

What types of owner entities do PHAs set up?

PHAs usually create a Corporation, Non-Profit Corporation, Limited Liability Corporation (LLC), or Limited Partnership (LP), but this is not an exhaustive list and other types of owner entities may be permissible under state law. PHAs should consult with their legal counsel when determining which type of legal entity is best given their specific situation.

[1] See Notice PIH 2017–21, Att. A.

What is the impact of transferring the asset on the existing public housing board?

This depends on the terms and bylaws used to establish the owner entity. PHAs often establish terms and bylaws that largely mirror the current PHA Public Housing Board structure. In which case, the control of the existing PHA Board is maintained though the owner entity.

What is the impact on agency staff?

This depends on the relationship between the PHA and the owner entity. Some PHAs transfer the existing staff to the new entity to continue providing program administration and property management functions. Other PHAs may decide to keep the staff under the PHA and have the owner entity contract with the PHA for property management functions. Sometimes there are existing staff contracts and State pension requirements that influence a PHA's decision here.

How does a PHA generally go about creating an owner entity?

This depends on state law and the particular type of owner entity. For corporations (including LLCs and non-profits), generally the following applies**:**

1. Select a name that complies with state corporation rules (i.e. not already on file with the state; doesn't violate trademarks). Some states require an official stock certificate form and corporate seal. Appoint an initial board of directors to set policies and make financial decisions.

2. File articles of incorporation and pay the state filing fee. Some states call this basic document a certificate of incorporation or charter. The internet offers standardized forms into which the name and a resident agent are identified. PHA counsel can serve as the resident agent and as the principal office address.

3. Create corporate bylaws which lay out operating rules that govern the day-to-day operations, such as needed quorums, how by-laws are amended and how members are appointed. Typically, bylaws are adopted by the corporation's directors at their first board meeting. If using the PHAs current by-laws, remember to rename the entity. Apply to the IRS using a 501(c)(3) tax exempt status form (if applicable).