DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 970

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[Docket No. R–95–1407; FR–2463–F–06]

RIN 2577–AA58

Public Housing Program; Demolition or Disposition of Public Housing Projects

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the interim rule which implemented section 121 of the Housing and Community Development Act of 1987. Section 121 amended section 18 of the United States Housing Act of 1937, which governs the demolition and disposition of public and Indian housing. Section 121 combined two of the previous demolition criteria, so that demolition may be approved if the project is obsolete due to its physical condition, location, or other factors which make it unusable for housing, *and* no reasonable program of modifications, such as rehabilitation, is feasible to return the project to useful life. Section 121 also provided that projects may not be demolished or disposed of unless the public housing agency (PHA) has developed a plan for the provision of a replacement unit for each unit involved. The plan must include a schedule for its completion (not to exceed six years); and HUD must agree, upon approving the plan, to commit the funds necessary to carry out the plan over the approved schedule, to the extent such funding is not provided from other sources (*e.g.*, State or local programs or proceeds of disposition), and HUD's commitment is subject to the availability of future appropriations. Section 121 repealed a previous statutory provision which made section 18 inapplicable to conveyance of units under homeownership programs. This rule continues that inapplicability to units under certain established homeownership programs, including disposition of a public housing project in accordance with an approved homeownership program under title III of the United States Housing Act of 1937, as provided by section 412(b) of the National Affordable Housing Act (''NAHA'').

Section 412(a) of NAHA amended section 18 of the U.S. Housing Act of 1937 to require that tenant councils, resident management corporation, and tenant cooperative, if any, be given appropriate opportunities to purchase the project or portion of the project covered by the demolition or disposition application. Therefore, a separate **Federal Register** document was published on October 6, 1992, at 57 FR 46074, that set forth the procedures and requirements for providing the opportunity to purchase to tenant councils, resident management corporations, and tenant cooperatives. This document was open to public comment and is being made final by this rule.

This rule also contains a provision that states that in the case of scattered-site housing of a public housing agency, the net proceeds of a disposition that is less than the full disposition shall be used for the payment of development cost for the project and for the retirement of outstanding obligations issued to finance original development or modernization of the project, in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition. This is a direct statutory requirement in compliance with section 512 of NAHA and, therefore, is contained in this final rule.

Section 116 of the Housing and Community Development Act of 1992 modified section 412(a) and provided for the use of 5-year project-based and tenant-based assistance in certain instances. It also provided that a very limited number of units could be demolished before the replacement requirements must be met. The section 116 provisions are considered self-executing and, therefore, are contained in this final rule.

EFFECTIVE DATE: February 17, 1995.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Acting Director, Office of Construction, Rehabilitation and Management, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1800. A telecommunications device for deaf persons (TDD) is available at (202) 472–6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0075.

Background

Section 121 of the Housing and Community Development Act of 1987 (Pub. L. 100–242) (''1987 Act'') amended section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) (''1937 Act'')—the statutory provision governing the demolition and disposition of public and Indian housing. On August 17, 1988, the Department published an interim rule (53 FR 30984) which implemented the 1987 Act amendments and became effective on October 6, 1988.

Below is a discussion of the public comments received on the interim rule, as well as the changes made by the interim rule as a result of the public comments.

Following that is a discussion of the remaining provisions of the final rule that were not discussed in the interim rule section of this preamble. This section also includes a discussion of the statutory changes made by section 412(a) of the National Affordable Housing Act (Pub.L. 101–625) (''NAHA''), as amended by section 116(a) of the 1992 Act, and the public comments received on the October 6, 1992 **Federal Register** notice which implemented section 412(a).

Interim Rule

Section 121 of the 1987 Act combined two of the criteria for demolition of public housing units, by requiring both that the project or portion of the project be obsolete as to physical condition, location, or other factors, making it unusable for housing purposes, and that no reasonable program of modifications is feasible to return the project or portion of the project to useful life. One factor that the Department will take into consideration in determining whether the program of modifications is reasonable is where the costs of such program exceed 90 percent of total development cost (TDC). (The use of a percentage of TDC to establish the reasonable cost for demolition was set forth previously in HUD Handbook 7486.1.) Before this statutory change, either criterion could be the basis for demolition of a project or portion of a project. The regulatory amendment for implementation of this statutory requirement can be found in § 970.6 of both the interim rule and this final rule.

The 1987 Act made no change in the alternative demolition criterion applicable to demolition of only a portion of a project; *i.e.*, where demolition will help to assure the useful life of the remaining portion of the project. An example of this would be selective demolition of units to reduce

project density incident to the modernization of the rest of the project.

The 1987 Act made no change in the disposition criteria.

Section 121 of the 1987 Act also mandated detailed requirements for a replacement housing plan for the provision of a decent, safe, sanitary, and affordable rental dwelling unit—on a one-for-one basis—for each public housing dwelling unit to be demolished or disposed of. The replacement housing plan must contain a schedule for completing the plan, within a period consistent with the size of the proposed demolition or disposition, but the schedule may in no event exceed six years. Questions have been raised regarding the meaning of ''completion.'' ''Completion'' does not mean that the replacement housing must be built or rehabilitated within the six years. For replacement units developed under the public housing development program, the completion of the plan would be when units have reached the stage of notice to proceed for conventional units and contract of sale for Turnkey units. Other replacement plan requirements contained in the 1987 Act are (1) that the plan be approved by the unit of general local government [1] in which the project is located; (2) that the plan ensure that the rent paid by the tenant after relocation will not exceed that permitted under the Act; and (3) that there be no action to demolish or dispose of any unit until the tenant has been relocated to decent, safe, sanitary, and affordable housing that is, to the maximum extent practicable, of the tenant's choice. (Some persons displaced by a demolition or disposition activity are also covered by the Uniform Relocation Act, as described later.) The rule also allows replacement with units of different sizes, after analysis of local needs as determined by the PHA, to accommodate changes in local priority needs. However, at least the same total number of individuals and families must be accommodated. The regulatory amendments for implementation of these statutory requirements can be found in §§ 970.4(d) and 970.11 of both the interim rule and this final rule.

Approval of an application for demolition or disposition requires a commitment for the funds necessary to carry out the plan. To the extent funding is not provided from other sources (*e.g.*, from State or local programs or the proceeds of disposition), HUD approval of the application for demolition or disposition will be conditioned on HUD's agreement to commit the funds—subject to availability of future appropriations—necessary to carry out the plan in accordance with its approved schedule. Because of the responsibility imposed on HUD to commit the funds necessary to carry out the plan, a high degree of certainty with respect to State and local commitments is necessary. Therefore, in order for HUD to determine HUD's commitment, at the time of application the PHA must provide written documentation of commitment of State or local funding for the replacement housing if that is what is contemplated in the replacement housing plan.

The statutory requirements for the plan enumerate the following types of eligible replacement housing, to be used singularly or in any combination: (1) The development of additional public housing dwelling units (by acquisition with or without rehabilitation or new construction); (2) the use of 15-year project-based assistance under section 8, when appropriated; [2] (3) the use of not less than 15-year project-based assistance under other Federal programs; (4) the acquisition with or without rehabilitation or development of dwelling units assisted under a State or local government program that provides for project-based assistance that is, in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years), comparable to assistance under section 8(b)(1) of the 1937 Act; or (5) any combination of such methods; or (6) the use of 15-year tenant-based assistance under section 8 (excluding rental vouchers under section 8(o)), including Section 8 Rental Certificates with 15-year funding subject to the special additional statutory constraints discussed below.

However, section 116(b) of the 1992 Act modifies the replacement housing plan requirements by permitting, where 15-year project-based assistance under section 8, 15-year project-based assistance under other Federal programs, and 15-year tenant-based assistance under section 8 (excluding vouchers) is not available, and where an application proposes demolition or disposition of *200 or more* units, the use of available project-based assistance under section 8 having a term of not less than 5 years, the use of available project-based assistance under other Federal programs having a term of not less than 5 years, and the use of tenant-based assistance under section 8 (excluding vouchers) having a term of not less than 5 years, respectively.

Note: In the case of 15-year project based assistance under other Federal programs, the Department has determined that low-income housing credits under Section 42 of the Internal Revenue Service Code is a Federal program providing 15-year project-based assistance and, therefore, qualifies as a source of replacement housing. Any replacement housing plan proposing the use of these credits must assure that the low-income housing units in the low-income housing credit project which are designated as replacement housing will be reserved for low-income families for the requisite period. Units which at the time of allocation of the credit are also receiving Federal assistance under Section 8 (except tenant-based assistance) or Section 23 of the Act, or Section 236, 221(d)(3) BMIR or Section 221(d)(5) of the National Housing Act, or Section 101 of the Housing Act of 1965, or other similar Federal program, are *not* eligible as replacement housing under this paragraph.

However, in the case of an application proposing demolition or disposition of 200 or more units, not less than 50 percent of the dwelling units for replacement housing shall be provided through the acquisition or development of additional public housing dwelling units or through project-based assistance, and not more than 50 percent of the additional dwelling units shall be provided through tenant-based assistance under section 8 (excluding vouchers) having a term of not less than 5 years.

Section 116(b) also provides that, in any 5-year period, a PHA may demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned and operated by the PHA, without providing an additional dwelling unit for each public housing dwelling unit to be demolished, but only if the space occupied by the demolished unit is used for meeting the service of other needs of the public housing residents. It should be noted that this provision applies only to demolition and not to disposition.

The provisions of section 116(b) are considered self-executing also. Accordingly, this final rule contains revisions to § 970.11(a) and creates a new § 970.11(j).

The following statutory limitations on the use of fifteen-year section 8 tenant-based assistance should be kept in mind:

With the exception of applications for demolition or disposition of 200 or more

[1] The Department has interpreted the phrase ''unit of general local government'' to mean the chief executive officer, e.g., the mayor or the county executive, as discussed later in this preamble.

[2] Replacement housing under this provision is limited. When section 121 of the 1987 Act was enacted, all Certificate Program funding was appropriated with 15 years of budget authority and, therefore, was readily available with a 15-year term. However, since 1989, Certificate Program funding has been appropriated with only a 5-year term, except for the special appropriations for Public Housing Demo/Dispo replacement housing. The last such special appropriation was in FY 1990.

units that propose the use of tenant-based assistance under Section 8 having a term of not less than five years for the replacement of not more than 50 percent of the units to be demolished or disposed of, the use of Section 8 tenant-based assistance (Existing Housing rental certificates) for replacement housing requires a two-part finding by HUD that (1) project-based assistance (including public housing, as well as other types of project-based assistance) is not feasible under the program standards or under any combination of these programs, and (2) private rental housing is actually available to those who would be assisted under the plan and that the supply of such housing is sufficient for the total number of rental certificates and rental vouchers available in the community and is likely to remain available for the full 15-year term of the assistance. This two-part finding must be based on objective information, such as the following statutory data elements: Rates of participation by landlords in the section 8 program; size, conditions and rent levels of available rental housing as compared to section 8 standards; the supply of vacant existing housing meeting the section 8 housing quality standards with rents at or below the fair market rent, or the likelihood of adjusting the fair market rent; the number of eligible families waiting for public housing or housing assistance under section 8; and the extent of discrimination against the types of individuals or families to be served by the assistance.

To justify the two-part finding, the PHA must provide sufficient information to support both parts of the finding—why any and all combinations of project-based assistance are not feasible and how the conditions for tenant-based assistance will be met, based on the pertinent facts of the particular local situation.

The determination as to the lack of feasibility of project-based assistance must be based on the standards for feasibility stated in the regulations pertaining to each type of eligible project-based program identified in § 970.11, including public housing, as well as the other types of eligible Federal, State and local programs. Thus, a finding of lack of feasibility may be made only if the applicable feasibility standards could not be met under *any* of the eligible programs, or any combination of them. For example, with regard to the feasibility of additional public housing development, relevant factors would include local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies.

The second part of the finding—availability of housing for tenant-based assistance—is a matter of whether the facts concerning local need and housing supply justify such a finding. Above are listed the statutory data elements on which a finding should be based. HUD may require additional data as may be relevant in particular circumstances.

Note: The statutory limitations discussed above do *not* apply to applications for demolition or disposition of 200 or more units that propose the use of tenant-based assistance under section 8 having a term of not less than 5 years for replacement of not more than 50 percent of the units to be demolished or disposed of.

Section 121 of the 1987 Act prohibits the use of rental vouchers for replacement housing. However, the Department has determined that rental vouchers may be an acceptable *relocation* housing resource, provided the displaced tenant is given referrals to suitable/comparable replacement housing (comparable housing, if the URA applies) where the rent paid by the tenant following relocation will not exceed the amount permitted under section 3(a) of the 1937 Act. (See § 970.5(b)). The PHA can meet its relocation housing obligation by providing a housing voucher and referrals to units that fall within the voucher payment standard and are owned by a person who agrees to rent to a voucher holder. The rule also makes the PHA responsible for payment of moving expenses and the provision of appropriate advisory services, including timely information notices, counseling, and the inspection of housing to which persons relocate.

The statutory restrictions on types of housing assistance that may be counted as replacement units do *not* apply to relocation. For example, tenants may relocate to other existing public housing units, or to privately owned housing, with rental certificate or rental voucher assistance, as qualified above. The purpose of relocation is to assure that all displaced families obtain other suitable/comparable housing at affordable rents, while the purpose of one-for-one replacement is to assure that the total low-income housing stock available is not diminished.

Public Comments

As a result of the interim rule published on August 17, 1988, at 53 FR 30984, public comments were received from six commenters: Three legal services organizations, one public housing agency, one community development organization, and one national association.

The commenters raised a variety of issues concerning the applicability of part 970, including whether (1) the 1987 Act amendments are applicable retroactively, (2) ''units approved for deprogramming'' before the effective date of the 1987 Act should be exempted, and (3) the exemption for homeownership sales to tenants should be retained. Below is a discussion of these issues, as well as some others raised by the commenters, and the Department's responses to them.

Retroactivity

Some commenters argued that the 1987 Act amendments should be applicable retroactively to cases where demolition or disposition was approved by HUD but not completed by the PHA before February 5, 1988, the effective date of the 1987 Act. These commenters maintained that even before the 1987 Act, section 18 of the 1937 Act required replacement housing in all instances of demolition or disposition of housing units, and that the 1987 amendments did not change the statutory requirements for replacement, but merely corrected an erroneous interpretation by HUD in the then-existing regulations.

The effect of acceptance of this argument would be to revoke those pre-1987 Act approvals, requiring the PHA to meet all added requirements under the 1987 Act and obtain a new HUD approval. The Department does not believe this effect to be defensible and disagrees with the commenters for the reasons set forth below.

HUD's first regulation on the demolition and disposition of public housing was published as a final rule (24 CFR part 870) on November 9, 1979 (44 FR 65368). At that time, the statutory language on this issue afforded HUD considerable administrative discretion as to regulatory policy. (See sections 6(f) and 14(f) of the 1937 Act). Neither these statutory provisions nor their legislative history contain any mention of replacement housing (except in connection with relocation), thus allowing HUD administrative rule making discretion on this issue. HUD exercised that discretion by providing in the 1979 regulation that ''If there is a local need for low-income housing, the PHA's request for demolition or disposition of dwelling units shall include a plan for replacement housing on a one-for-one basis or as approved by HUD to be warranted by current and projected needs for low-income housing and subject to HUD's findings as to the availability of funds.'' Thus, subject to

the need for low-income housing and the availability of funds, HUD's original regulation required, as a matter of policy, replacement housing as a condition for HUD approval in all cases of either demolition or disposition of dwelling units. However, the Housing and Urban-Rural Recovery Act of 1983 (''1983 Act'') repealed former sections 6(f) and 14(f) and substituted a new section 18 that was more detailed and prescriptive. HUD decided to impose a replacement housing requirement only where required by the statute, and both the statute and the rule allowed the PHA discretion as to the provision of replacement housing with one exception. The only circumstance under which the statute and the rule required replacement housing was where the justification for disposition is that it will allow acquisition, development or rehabilitation of other units which will be more efficiently or effectively operated as lower income housing and will preserve the lower income housing stock available in the community. (See section 18(a)(2)(A)(i), U.S. Housing Act of 1937, 42 U.S.C.1437p.) No replacement housing requirement was prescribed under the other two alternative criteria for disposition, and no replacement requirement was prescribed at all for demolition, regardless of which of the demolition criteria was applicable.

The argument for retroactive application of the 1987 amendments is not persuasive. Indeed, in *Project B.A.S.I.C.* v. *Kemp,* 907 F.2d 1242 (1st Cir., July 6, 1990) the Court of Appeals for the First Circuit rejected the retroactive operation of the statute. The Fifth Circuit was in accord in *Walker* v. *HUD,* 912 F.2d 819 (5th Cir., September 27, 1990).

To preclude any further misconceptions on this point, the final rule adds clarifying language under § 970.2(b). A demolition or disposition application that received written HUD approval before February 5, 1988, may be carried out according to the terms and conditions of the approval and the regulations in effect at the date of approval, without the necessity for meeting any additional requirements under the 1987 Act or for seeking any additional HUD approval.

Applicability to Units Approved for Deprogramming

Several commenters objected to the inclusion in the interim rule's listing of exceptions in § 970.2(g) of ''units deprogrammed before February 5, 1988'' (the effective date of the 1987 Act). In a subsequent notice, however, this provision was corrected to read ''units approved for deprogramming before February 5, 1988''. (See 53 FR 40220, October 14, 1988).

The final rule removes the ''units approved for deprogramming'' exception. The term ''units approved for deprogramming'' refers to HUD approval of a formal written request by a PHA to permanently remove a unit from both its public housing inventory and its ACC. (See 24 CFR 990.102). The exception for ''units approved for deprogramming prior to February 5, 1988'' was intended to exclude from the coverage of the interim rule, units which HUD had approved for demolition or disposition, prior to the effective date of the 1987 Act amendments. Because the term ''units approved for deprogramming'' is misinterpreted by some to include units temporarily removed for non-dwelling use, as well as, units approved for demolition or disposition, utilizing this term has caused unnecessary confusion in the administration of HUD's demolition or disposition regulations. Therefore, the exception which references ''units approved for deprogramming'' is being deleted. A new § 970.2(b) of the final rule more clearly states the intended exception which is that demolitions and dispositions approved by HUD prior to February 5, 1988, are exempt from the requirements of the 1987 Act. Demolitions or dispositions that were approved by HUD before February 5, 1988, but not carried out by that date, may be carried out according to the terms of such approval, without reference to subsequent amendments to this part and without obtaining any further HUD approval. Conversions and reconfigurations of interior space are exempted by § 970.2(a)(5).

Other commenters argued for some degree of flexibility. One urged that the exception from the replacement housing requirement be extended to include units that were uninhabitable as of February 5, 1988, and defined such housing as housing stock that was not suitable and usable for housing purposes and that was not being used by the PHA as part of its housing stock as of February 5, 1988. Another commenter suggested that HUD be authorized to waive the replacement requirement in special situations, such as where there is an urgent need for demolition, but special problems preclude replacement. While arguments for some degree of flexibility have considerable merit the statute does not provide for such flexibility.

Exemption for Homeownership Sales to Residents

Some commenters argued that the 1987 Act amendments make the disposition provisions applicable to homeownership sales to tenants, because the 1987 Act removed the paragraph that specifically excepted such sales. One commenter asserted that Congress intended to make only the replacement housing provisions applicable to homeownership sales.

There is nothing to suggest that Congress intended to make homeownership sales subject to the disposition provisions, including not only the replacement housing provision, but also the justifiability provisions under the statutory criteria, the local government approval provision, and the tenant consultation provision. This means that the issue is not germane to any of the following homeownership units whose sales were approved (even if not completed) before February 5, 1988:

—All existing Turnkey III units, because approval for sale was incident to approval for development. (Development of additional Turnkey III units was suspended before enactment of the 1987 Act, so there is no issue as to post-February 5, 1988 approvals for Turnkey III sales.)

—All Mutual Help units approved for development before February 5, 1988, whether in existence or in the process of development as of that date. (Like Turnkey III, approval of sales of Mutual Help units were incident to approvals for development.)

—All units approved for sale under the Public Housing Homeownership Demonstration, because all such approvals were made before the effective date of the 1987 Act.

—All units approved for sale under the section 5(h) Homeownership Program before the effective date of the 1987 Act. (This refers to the regular Section 5(h) Homeownership Program under which a number of PHAs have chosen to initiate homeownership sales to tenants over the 15 years since this statutory option was added in 1974, as distinguished from the demonstration that was undertaken by HUD under the authority of section 5(h).)

The Department believes that it was not the intent of Congress to make the disposition requirements applicable to homeownership sales via resident management corporations under the new Public Housing Homeownership and Management Opportunities program established by section 123 of the 1987 Act (section 21 of the 1937

Act), because the legislative provisions for that program contain separate requirements on replacement, rights of tenants in occupancy, public hearings, and use of sale proceeds.

HUD does not believe that Congress intended to make the disposition requirements applicable to future approvals for sale of Mutual Help units. Since approval for sale to eligible homebuyers is incident to approval for development, imposing the disposition requirements would seriously hinder, if not entirely preclude, development of new Mutual Help projects that have been expressly authorized by Congress as the principal vehicle for additional units under the Indian Housing Program. Also, we do not believe that Congress intends to treat future approvals for homeownership sales under the Section 5(h) Program as dispositions subject to part 970. Property that would be suitable for homeownership could not satisfy the disposition criteria, so that the effect of interpreting the disposition requirements of section 18 as applicable to the Section 5(h) Program would be de facto repeal of the program. This would be contrary to the Conference Report language regarding section 123(d) of the 1987 Act, which states that ''any homeownership program in existence prior to enactment may be continued under existing requirements * * *'' [H.R. Rep. No. 100–426, 100th Cong., 1st Sess. p. 175 (Conference Report on S. 825)] Also, it should be noted that the National Affordable Housing Act subjects 5(h) proposals to replacement housing requirements contained in the HOPE for Public and Indian Housing Homeownership (HOPE 1) program. This represents further evidence of congressional intent that 5(h) sales not be subject to the disposition requirements of section 18. However, proposals by a PHA to demolish units that are the subject of these various homeownership programs would have to satisfy the demolition requirements of section 18 and part 970.

In keeping with section 412(b) of NAHA, the provisions of this rule do not apply to the disposition of a public housing project in accordance with an approved homeownership program under title III of the 1937 Act, as added by section 411 of that legislation, (HOPE 1). In the case of a homeownership proposal under HOPE 1 or section 5(h) from a PHA involving partial or total demolition of units, Section 18 and this rule apply. HOPE for Homeownership of Single Family Homes (Hope 3) proposals involving public housing units approved prior to the 1992 Act are likewise covered by the requirements of section 18. [The 1992 Act took scattered-site single family public housing from under the requirements of HOPE 3 and moved it to HOPE 1.]

Criteria for Demolition or Disposition

None of the commenters objected to the change in the disposition criteria under the interim rule. Some, however, objected to the language in place before the 1988 interim rule regarding the criteria for demolition which did not change because of the 1987 Act amendments. The language to which the commenters objected is § 970.6(a)(2), which lists adverse neighborhood conditions among the three types of ''major problems indicative of obsolescence.'' Section 970.6(a)(2) was included in the interim rule merely to provide the context for the change that combined ''obsolescence as to physical condition, etc.'' with ''no reasonable program of modifications, etc.'' as necessary criteria to justify demolition. Although the language in question is not open to public comment, the next paragraph provides clarification on this issue.

Concern for this issue reflects a misreading of the fundamental rationale of the whole of paragraph (a) of this section. The commenters mistakenly assume that demolition is necessarily justified when any of the problems listed in subparagraphs (a)(1) through (3) are found to exist. That is not the case. The provision is not intended as a simplistic formula, and no such formula would be adequate for the kind of complex analysis that is called for in making these types of determinations. The Department believes that Congress intended a common-sense viability determination, based on a thorough examination of all of the facts that are pertinent to both obsolescence and the feasibility of rehabilitation.

One commenter objected to § 970.6(b)—the alternative criterion that applies in cases of partial demolition only; i.e., to permit demolition of a portion of a project where demolition will help assure the useful life of the remaining portion of the project. [Where demolition of all units of a project is proposed, the only option is the criterion of paragraph (a). Where partial demolition is proposed, the PHA has the choice of seeking approval under either paragraph (a) or (b)]. This commenter, expressing concern about possible abuse, urged further amendment of the regulation to add guidelines for interpreting the alternative criterion in paragraph (b).

The Department believes that Congress intended to give PHAs reasonable discretion in making the judgments required to determine when partial demolition may be justified to ''help assure the useful life of the remaining portion of the project.'' However, the Department is considering providing some guidance on this provision in the revision to the Demolition/Disposition/Conversion Handbook (HUD 7486.1).

Tenant Consultation

While not making specific recommendations for changes in the requirements for tenant consultation (see § 970.4(a)), some commenters expressed concern about this subject. Neither the interim nor the final rule changes this provision of the old regulation. However, in view of the comments, the Department takes this opportunity to clarify that this regulatory requirement remains unchanged by the later statutory requirements set forth in the NAHA or the 1992 Act.

Neither the interim rule nor this final rule changes the requirement that the tenants of the project affected and any tenant organizations for the project or on a PHA-wide basis must be consulted in the developmental stage of the PHA's proposal, with fair notice and opportunity to submit comments and recommendations, including any recommendations for alternative strategies. While the PHA retains the authority to make the final decision whether to submit a demolition or disposition proposal, ''consultation'' implies a requirement for the PHA to give full and serious consideration to tenant comments and recommendations *before* making a decision. Where a building, or group of buildings, at the development is vacant, the PHA is responsible for consulting with any remaining residents or resident organizations, as well as any PHA-wide resident organizations. If the development is totally vacant, the PHA is still responsible for consulting with PHA-wide resident organizations on the issue of whether to demolish or dispose of the property.

Recognizing the variety of local circumstances in a program that encompasses PHAs of different sizes in many different kinds of communities throughout a diverse country, the regulation allows flexibility as to the exact methods that may be employed to satisfy the tenant consultation requirements, provided that there is genuine compliance with the essential elements stated in § 970.4(a).

Note: Section 412(a) of NAHA, as amended by the 1992 Act, amended section 18 of the U.S. Housing Act of 1937, to require that tenant councils, resident management

corporation, and tenant cooperative, of the project or portion of the project covered by the application, if any, be given appropriate opportunities to purchase the project or portion of the project covered by the demolition or disposition application. Therefore, a separate **Federal Register** document was published in the **Federal Register** on October 6, 1992, at 57 FR 46074, that sets forth the procedures and requirements for affording the opportunity to purchase to tenant councils, resident management corporations, or tenant cooperatives. This document was open to public comment and is being made final by this rule. Further discussion of this document (and the public comments received on it) is set forth later in this preamble. The requirements of section 412(a) are separate and distinct from the tenant consultation requirements discussed immediately above.

Relocation Assistance

Two commenters recommended that § 970.5 be amended to make it clear that, when offering a displaced tenant the choice of using a Section 8 rental voucher or rental certificate, the PHA must inform the tenant that rent due to the owner under the lease following relocation may exceed the Section 8 fair market rent. The Department has included language to clarify its policy. The Department has determined that rental vouchers may be an acceptable *relocation* housing resource, provided the PHA ensures that referrals are made to units where the monthly amount the family must pay to the owner to cover the family's portion of the rent due to the owner will not exceed the amount determined in accordance with 24 CFR 813.107. (See § 970.5(b)). Such referral may be to other public housing units or units made affordable with a Section 8 rental certificate or voucher. If the PHA provides referrals to suitable/comparable relocation housing (comparable housing when the displacement is subject to the URA) and a tenant with a rental voucher elects to rent a housing unit with a rent to owner that exceeds the voucher payment standard as determined by the Housing Voucher program, the tenant will be responsible for the difference between the voucher payment standard and the rent to owner. Furthermore, § 970.5(e)(2) requires the PHA to provide ''counseling and advisory services to assure that full choices and real opportunities exist for tenants displaced * * *.'' That language, which remains unchanged from the old regulation, requires the PHA to give displaced tenants full and fair information about all relocation options, including use of rental vouchers where that option is available. As in all other matters, this implies a duty of good faith and diligence on the part of the PHA. There is no evidence to support the commenters' assertions that ''tenants will only select rental vouchers if they are presented (or pushed) by the PHA as the only alternative''.

A more complete discussion of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requirements is set forth later in this preamble.

One commenter objected to the statement that tenants become eligible for relocation assistance as of the date of receipt of official notice to move, asserting that tenants sometimes vacate before official notice as a result of PHA pressure or reduction of services. This commenter recommended that tenants be entitled to relocation benefits at any time if the PHA is encouraging tenants to move or fails to maintain the property. The commenter is referred to the definition of ''displaced person'' under § 970.5(i) and the definition of ''initiation of negotiations'' under § 970.5(k) to determine eligibility for relocation assistance. A person becomes eligible for relocation assistance when HUD approves the demolition or disposition under this part. Also, a person forced to vacate the property by an action associated with the planned demolition or disposition of the property, may qualify as a ''displaced person'' who is eligible for relocation assistance, even if the action occurs before HUD approval of the demolition or disposition. A person who is dissatisfied with the PHA's determination of eligibility may appeal to HUD under § 970.5(g). If HUD determines that the PHA's action resulted from the demolition or disposition of the property, the PHA would be required to provide the appropriate relocation assistance.

Note: If the PHA's action was found to be an ''action to demolish or dispose of'' the property under § 970.12, then the PHA would be required to cease those actions (e.g., stop vacating a development). If tenants believe that the PHA's actions are contrary to its lease obligations, they may pursue the remedies available to them under the lease.

Actual Availability of Replacement Housing

One commenter expressed concern over the fact that HUD cannot approve demolition or disposition until there is a commitment of funds for the necessary replacement units, and recommended that HUD propose to Congress options for PHAs that ''desperately need to get rid of units but for which no funds are immediately available''. The commenter also suggested that Congress be updated regularly on the yearly needs and costs for pending and approved demolition projects, so that adequate funding may be appropriated.

The commenter's concern that the Department cannot approve applications for demolition or disposition until the funds are committed is unfounded. The Department processes requests for demolition or disposition under section 18. However, under section 18, applications are approved *subject to* the availability of funds for replacement housing. As a point of clarification, section 513 of the National Affordable Housing Act of 1990 requires the Department to report to Congress each year on its replacement housing needs beginning in FY 1992.

One commenter recommended a requirement that the replacement housing be available for occupancy before the demolition or disposition is carried out. This recommendation has not been incorporated into the final rule, which conditions HUD approval and PHA action on commitment of funds for the replacement units, rather than availability of the units for occupancy. Once the decision has been properly approved, requiring that the actual demolition or disposition be delayed until replacement units are available for occupancy would be unwarranted. The old units may be a blight on the neighborhood, vacant and substandard, and perhaps a threat to public health and safety or a financial drain on the PHA. In some cases, selective demolition may be an essential part of a comprehensive modernization plan. One of the disposition criteria was developed in contemplation of the kind of case where the existing property will be sold to obtain funds to finance the replacement units. Where the replacement units are to be produced by new construction, several years will probably be required before the new units will be available for occupancy. The commenter's recommendation may reflect the misconception that replacement units are always needed for relocation. However, past experience indicates that replacement units do not normally serve as the source for relocation of the affected residents. The affected residents are usually relocated to other units within the PHA's inventory or provided with Section 8 assistance. There is no statutory or regulatory requirement that the relocated residents be placed in the replacement housing.

This Final Rule

In addition to the regulatory amendments being made as a result of the public comments discussed above,

the following additional revisions are made in this final rule. These revisions include modifications and new requirements originating out of the URA, the NAHA, and the 1992 Act.

Section 970.2, Applicability, is revised to except, from coverage of the disposition requirements of section 18 and part 970, homeownership sales under (1) section 21 of the 1937 Act (as added by section 123 of the 1987 Act); (2) the Turnkey III/IV and Mutual Help Homeownership Opportunity Programs; and (3) other homeownership programs established under sections 5(h) or 6(c)(4)(D) of the 1937 Act and in existence before February 5, 1988, the effective date of the 1987 Act. (Section 21 pertains to homeownership programs through resident management corporations.) Thus, the demolition/disposition regulations will be inapplicable to all conveyances under existing homeownership programs. In addition, in keeping with section 412(b) of NAHA, the provisions of Part 970 do not apply to the *disposition* of a public housing project in accordance with an approved homeownership program under title III of the 1937 Act, as added by section 411 of that legislation, (Hope 1 for Public and Indian Housing Homeownership). However, in the case of a homeownership proposal under HOPE 1 or section 5(h) from a PHA involving partial or total *demolition* of units, Section 18 and this rule apply. Hope 3 proposals involving public housing units approved prior to the 1992 Act are likewise covered by the requirements of section 18. [The 1992 Act took homeownership for scattered-site single family public housing from under the requirements of HOPE 3 and moved it to HOPE 1.]

Section 970.2 is also revised to except easements, rights-of-way, and transfers of utility systems incident to the normal operations of the development.

A correction is made to § 970.4(b) to be redesignated as § 970.4(c) the paragraph regarding the requirements of the environmental and historic preservation statutes. Furthermore, this section requires that where the site for the replacement housing is known at the time of application for the demolition or disposition, the site must comply with these requirements. However, the amendment to this section clarifies that where the site(s) of the replacement housing is not known at the time of application (whether federally or non-federally funded), the PHA shall follow the requirements of 24 CFR 50.3(i), as set forth in the rule text at § 970.4(c).

In addition, paragraphs (d), (e), (f), and (g) are added to § 970.4(c) regarding assurances and certifications for commitment of funds to carry out the replacement housing plan, compliance with the offering to resident organizations, relocation of residents, and site and neighborhood standards.

[**Note:** In sec. 970.4 of the final rule as it existed prior to the 1988 interim rule, paragraph (c) required a certification from the chief executive officer that the proposed activity was consistent with the housing assistance plan (HAP). The requirements regarding the HAP were replaced by the Comprehensive Housing Affordability Strategy (CHAS). However, under 24 CFR 91.1(b)(3), all public housing programs, except HOPE 1, are excluded from the requirements of the CHAS.] Therefore, the previous requirement for consistency with the HAP has been dropped.

Paragraph (c) of § 970.5 of this final rule is added to set forth the requirements of the URA. Effective April 2, 1989, the URA was amended to, among other things, expand coverage. It now covers all persons displaced as a direct result of publicly or privately undertaken rehabilitation, demolition or acquisition for a Federal or federally assisted project. Therefore, demolition of any public housing property that is owned by PHAs and that is subject to the Annual Contributions Contract under the 1937 Act, or the disposition of the property to a Federal agency or to any person or entity that acquires the property for a federally assisted project, would make the transaction subject to the URA and make any person displaced as a result of such action eligible for relocation assistance at URA levels. Families and individuals who are not eligible for relocation assistance at URA levels are eligible for the relocation assistance described in section 970.5(e). Required relocation assistance is described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

Section 970.8, paragraph (f) is revised to clarify that approval of the replacement housing plan shall be provided by the unit of general local government which shall be the chief executive officer of the jurisdiction in which the project is located (e.g., the mayor or the county executive).

In § 970.9, paragraph (b)(1) is amended to state that net proceeds (after payment of HUD-approved costs of disposition and relocation) shall be used for the retirement of outstanding obligations, *if any*, issued to finance original development or modernization of the project. This is in recognition of the possibility that such obligations may not have been forgiven. (See 42 U.S.C. 1437b.) (If project debt has been forgiven, there will be no outstanding obligations.) Reference to the payment of development costs has been removed because development cost is contained in the outstanding obligation, and double payment should not be implied.

A new paragraph (c) is added to § 970.9 which states that in the case of scattered-site housing of a public housing agency, the net proceeds of a disposition shall be used in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition. This is a direct statutory requirement in compliance with section 512 of the National Affordable Housing Act (Pub. L. 101–625) and, therefore, is contained in this final rule. An example of how this provision would be applied in cases where debt has not been forgiven is: If a development project of ten units that cost $100,000 has one unit disposed of for $10,000, then there would be no net proceeds after paying off the proportional cost ($100,000 divided by 10 = $10,000/unit) of the project. If, however, the unit was disposed of and net proceeds were $12,000, there would be $2,000 available that the PHA would use for the provision of housing assistance for low-income families.) Where debt has been forgiven, all the net proceeds may be used by the PHA for the provision for low-income housing.

Section 970.11(a) is revised to clarify that in the event that the replacement housing will be located outside the political boundaries of the locality of the PHA, all relevant program requirements must be satisfied, including approval of the replacement housing plan by the unit of general local government in which the project being demolished or disposed is located, and the execution of such agreements as may be necessary between the PHA and the locality in which the replacement housing will be located. In the case of new public housing, this would require a Cooperation Agreement between the PHA and the locality in which the replacement housing would be located. It is expected that replacement housing would be operated or administered by the PHA. However, in instances where the PHA can make arrangements for another PHA to develop, operate or administer the new public housing, the section 8 assisted housing, or other replacement housing such as a State or Local program Section 8 assisted housing that is outside the PHA's area of operation, the PHA must ensure that the families that would have been eligible to occupy the replacement housing if it had been replaced in the same locality as the project being

demolished or disposed, will be the same families that benefit from the replacement housing. In addition to the Cooperation Agreement for public housing, and in the case of Section 8 replacement housing or other replacement housing, other agreements may be necessary in order to assure that this and other program requirements are satisfied.

Section 970.11(c) is revised to reflect the requirement that when demolition or disposition of dwelling units is proposed, the PHA application for HUD approval must contain documentation of approval by the unit of general local government in which the project proposed for demolition or disposition is located, which approval shall be provided by the chief executive officer of the jurisdiction in which the project is located (e.g., the mayor or county executive). Section 970.3 has been revised to add to the list of definitions, a definition for ''chief executive officer of a State or unit of general local government.''

Since October 1988 when the interim rule became effective, the Department has interpreted the phrase ''unit of general local government'' to mean the local governing body, e.g., the City Council or the Board of Aldermen. Consequently, in order to comply with this requirement, a PHA requesting permission to demolish or dispose of one or more dwelling units was required to provide the Department with a copy of a resolution from the City Council or the appropriate local governing body approving the replacement housing plan. However, experience has demonstrated that obtaining the approval of the local governing body has proven to be an extremely time consuming and difficult process, particularly when the replacement housing is public housing development. In some communities the local governing body has strenuously objected to putting public housing in the community. The effect of local governing body opposition to a replacement housing plan has been to delay approval of demolition or disposition applications for extended periods of time. After a review of the problem and research of the legislative history on this point, the Department has determined that it is permissible to allow the chief executive officer, e.g., the mayor or the county executive, to approve the replacement housing plan.

Section 970.11(h) of the interim rule is revised by the final rule for technical and clarifying reasons. The purpose of this provision is to assure that the replacement sites will satisfy standards related to nondiscrimination and housing opportunities. In some instances the time for compliance with the site and neighborhood standards is during the demolition or disposition application and review process, and in other instances compliance is deferred. The requirements regarding site and neighborhood standards will be as follows:

(1) If funds have been committed to provide replacement units under the Public Housing Development Program or the Section 8 project-based assistance program, except when the PHA plans to build back on the same site, the site and neighborhood standards applicable for those programs will apply and be assessed at the appropriate time as required by that program rule or handbook and not at the time of the demolition or disposition application. The PHA must certify to HUD at the time of the demolition or disposition application, that once the site is identified, the PHA will comply with the site and neighborhood standards applicable for those programs.

(2) If funds have been committed to provide replacement units under the Public Housing Development Program or the Section 8 project-based assistance program and the PHA plans to build back on the same site, the PHA shall comply with the site and neighborhood standards applicable for those programs when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(3) If the replacement housing units are to be provided under a State or local program, and the site is known (including building back on the same site), the PHA is required to comply with site and neighborhood standards comparable to 24 CFR part 882 when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

However, if the site is not known, the PHA shall include in the application for demolition or disposition a certification that it will comply with site and neighborhood standards comparable to 24 CFR part 882 once the site is known.

In the case of replacement housing funded by State or local government funds, the PHA must demonstrate in the application that it has a commitment for funding the replacement housing.

(4) If the replacement housing units are to be provided out of the proceeds of the disposition of public housing property, and the site is known (including building back on the same site), the PHA is required to comply with site and neighborhood standards comparable to 24 part 941 (or under 24 CFR part 882 in the case of use of Section 8 assistance) when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

However, if the site is not known, the PHA shall include in the application for demolition or disposition a certification that it will comply with site and neighborhood standards comparable to 24 CFR part 941 or under 24 CFR part 882 once the site is known.

Section 970.12 of the August 1988 interim rule is *not* made final by this final rule. Comments received on § 970.12 will be considered in the development of a separate *proposed* rulemaking on the issue of required and permitted actions prior to approval of an application for demolition or disposition. Until a *final* rule is issued on § 970.12, the provisions of the August 1988 interim rule remain effective.

Changes Required by Section 412(a) of the National Affordable Housing Act—Resident Organization Opportunity to Purchase

Section 412(a) of the National Affordable Housing Act (''NAHA''), Pub.L. 101–625, amended section 18 of the U.S. Housing Act of 1937 to require that ''tenant councils, resident management corporation, and tenant cooperative, if any,'' be given appropriate opportunities to purchase the project or portion of the project covered by the demolition or disposition application.

Section 116(a) of the Housing and Community Development Act of 1992 (the ''1992 Act'') amended section 18 of the U.S. Housing Act of 1937 to require PHAs to limit the opportunity to purchase the development or portion of the development proposed for demolition or disposition only to the resident organization(s) at the affected development. This provision clarifies an ambiguity regarding the breadth of the offer (as discussed below in the public comments to the October 6, 1992 Notice) and is considered self-executing. Accordingly, the Department issued Notice PIH 93–17 (PHA) on April 2, 1993 to inform program administrators and participants of this clarification and its immediate effect. This final rule

accommodates this clarification in the new § 970.13.

Section 418 of NAHA permitted the Department to establish by notice the requirements necessary to carry out this provision. Therefore, the Department published a notice of guidelines on October 6, 1992, at 57 FR 46075 and solicited public comments on the provisions set forth in that notice. The Department received public comments from five organizations: Two large national associations, one housing finance corporation, one public school system, and a HUD field office. Below is a listing of the issues raised by the commenters. Each issue is followed by a discussion of the Department's resolution of the issue.

Comment: There should be a distinction provided between real property that is developed with dwelling units and is occupied and real property that is vacant and abandoned (which should be excluded from the section 412(a) requirements. [a public school system]

Response: Section 412(a) does not apply in the case of totally vacant or abandoned development. There would be no residents to organize and, consequently, no organization to receive the offer. However, if the development is only partially vacant, the PHA is required to offer the property under application to the existing resident group, or where no group exists, the PHA must make a reasonable effort to allow the residents of the affected development to organize. The PHA has the same responsibility where only a building, or group of buildings, is vacant within the development.

Comment: There is no rationale for limiting the area of land to be acquired by a public body to less than two acres. [a public school system]

Response: On the basis of experiences in the program, the limitation of two acres was selected to reduce the possibility of injustice from profit-motivated actions. However, the Department's experience is rather limited. The threshold was established based upon experience for the last six years. It is inappropriate to allow more flexibility in this area without (1) more time to see the impact of the existing provision, and (2) a better understanding of the number of PHAs affected by the provision.

Comment: Financial capabilities of resident councils, resident management corporations, resident cooperatives or other similar legal instrumentalities should be assessed independent of possible future Federal grants, because such organizations may flounder when these resources are gone. [a public school system]

If the units being sold will continue as rental units, the plan for the use of the property should include financial operations/solvency of the development. [a HUD field office]

Response: The long-term financial capability of a possible resident group as a purchaser should be considered by the PHA when it reviews the group's proposal. Absent any prior experience under the new resident purchase requirement, the Department sees no reason to require the PHA to give more weight to one factor over another.

Comment: The guidelines should include realistic but firm timetables for plan implementation which should be enforced. [a public school system]

Response: The requirements related to providing resident organizations the opportunity to organize are very new. To date only one resident organization has prepared a proposal for PHA consideration. Based on this experience, there is no reason to require strict timetables.

Comment: Another case, regarding applicability, which does not present an appropriate opportunity for resident purchase is when the housing authority plans to redevelop the real estate with replacement public housing. [a housing finance corporation]

Response: The PHA is required to consult with residents and resident organizations under § 970.4 regarding any proposals to demolish or dispose of any property. This consultation should include advisements of any PHA plans to reuse the property and a complete discussion of any replacement housing plans. It is clear that Congress wanted resident organizations to be given the opportunity to purchase the property.

Comment: It is an incorrect interpretation that is a violation of the statute to afford notice and opportunity to purchase to city-wide resident groups or, in the case where there is no organized resident group at the affected project, to allow 45 days for a resident organization to be formed. A process that is already lengthy is made more protracted and burdensome by the time periods created by the Department. The statutory reference to tenant groups, ''if any,'' refers to groups already in existence. [two national associations]

HUD cannot avoid the cost/benefit analysis of Executive Order 12291, by designating the document as a guideline. No cost/benefit analysis or regulatory review was performed prior to the issuance of the notice. The benefits of imposing a ''notice'' do not outweigh the cost to PHAs as a result of the long delays and increased liabilities they will have to face before being permitted to submit an application. A PHA is permitted to demolish or sell only its very worst projects which are often extremely unsafe. [one national association]

Response: The Department has examined the notice and the process for permitting resident organizations to form and recognizes that the additional time periods may be burdensome. However, the Department still believes that as a matter of policy, residents should have the opportunity to form a resident organization. In response to the concerns raised by the commenter, however, this rule abbreviates the process considerably. The process can be further truncated into the already established requirement for tenant consultation under 24 CFR 970.4(a). Therefore, where the affected development does not have an existing resident council, resident management corporation or resident cooperative at the time of the PHA proposal to demolish or dispose of the development or a portion of the development, the PHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of ''reasonable effort'' at a minimum include at least one of the following activities: Convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. The Department will not approve any application that cannot demonstrate that the PHA has allowed at least 45 days for the residents to organize a resident organization. The PHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under 24 CFR 970.4(a).

While the Department is concerned about the costs and the benefits as they relate to the PHAs, the Department also has similar regard and concerns for the residents who are also beneficiaries of the public housing program. Therefore, we believe that giving residents the opportunity to purchase projects that the PHA has deemed unusable for public housing purposes could benefit the residents both socially and economically. Furthermore, under Executive Order 12866 (which replaced Executive Order 12291), only ''significant regulatory actions'' are required to have an assessment of the costs and benefits of the action prior to promulgation. This final rule does not

meet the definition of ''significant regulatory action.''

Comment: The guidelines should not have been made effective upon publication but should have permitted public comment before taking effect. The guidelines are in violation of HUD's part 10 which requires the Department to follow APA procedures for rulemaking. The guidelines should be withdrawn and a new proposed rule issued, incorporating the provisions of the Housing and Community Development Act of 1992. The term ''notice'' in section 418 of NAHA refers to ''notice and public comment'' and not the **Federal Register** format. [two national associations]

Response: Section 418 of the National Affordable Housing Act, Public Law 101–625, permitted the Department to establish by notice the requirements necessary to carry out the provision in a more timely manner. It is clear that the Congress intended that the Department establish the requirements and procedures for offerings to resident organizations as soon as possible. The determination as to the meaning of ''notice'' was made after substantial consideration.

Comment: The fact that the statute and the guidelines give resident groups the right to demand to purchase a project, but impose no requirement on the purchasing group to use the project for housing purposes, raises serious constitutional and policy questions. The U.S. Constitution prohibits the Federal Government from appropriating private property unless just compensation is provided and the taking is pursuant to a public purpose. Without a use restriction, it is questionable whether forcing a PHA to transfer its project to a resident group, and thereby suffer the loss of a competitive price, serves a valid public purpose when the end result is not increased housing opportunity. [one national association]

The guidelines should require some type of guarantee by the resident group purchasers that the units will be utilized as housing for low-income households. [one national association]

If a PHA may consider an offer that proposes a purchase of less than fair market value with demonstrated commensurate public benefit, ''demonstrated commensurate public benefit'' should be defined. [a HUD field office]

Response: There is nothing in the statute or the legislative history which would lead the Department to believe that Congress intended that resident organizations be restricted in the use of the property. Therefore, the Department did not impose such a restriction. The final rule gives the PHA the authority to establish the terms of sale and to approve or disapprove of the resident organization's proposal. With this kind of authority, the PHA is not being forced to transfer its property to a resident organization.

Examples of ''demonstrated commensurate public benefit'' will be provided in the new handbook for demolition/disposition activities.

Comment: The Department's ''federalism'' certification under Executive Order 12612 incorrectly rules that PHAs are not units of local government. There are serious federalism implications because the guidelines intrude in to the day-to-day management decisions of PHA directors, who are State or local officials. The guidelines threaten the balance of power between the respective levels of government because they direct State or local officials to incur increased costs related to delay and maintenance of blighted or unsafe buildings. [one national association]

Response: The Department recognizes that overall section 18 places significant requirements on PHAs; however, the requirement that offerings be made to resident organizations is mandated by statute. The Department has determined that these requirements do not have ''federalism implications'' because they do not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Comment: The guidelines cannot be applied to pending applications because HUD does not have the power to promulgate rules with retroactive effect. Congressional enactments and administrative rule will not be construed to have retroactive effect unless their language requires this result. [one national association]

Response: ''Pending'' does not mean ''approved.'' Section 18 prohibits *approval* by the Secretary unless all of the requirements of the section are met.

Note: Other comments received from the HUD field office were technical corrections related to appropriate cross-references and definitions. These technical comments were reviewed and accommodated where indicated.

The regulatory provisions implementing section 412 of NAHA, as those provisions have been revised to accommodate the public comments discussed above, can be found at a new § 970.13 added by this rule.

Applicability to the Native American Program

As a result of section 201(b)(1) of the 1937 Act, the provisions of title I of the 1937 Act apply to low-income housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority. Therefore, the demolition and disposition provisions under part 970 (as it is revised by the 1988 interim rule) extend to Indian housing authorities and have been incorporated in part 905, the regulations for the Indian Housing Program. However, under section 201(b)(2) no provision of title I, or amendment to title I, that is enacted after the date of enactment of the Indian Housing Act of 1988 (June 29, 1988) shall apply to public housing developed or operated pursuant to a contract between the Secretary and an Indian housing authority unless the provision explicitly provides for applicability. Therefore, absent such a provision, section 116 of the 1992 Act does not extend to Indian housing authorities.

This issue, as well as finalizing the 1988 interim rule in part 905 and sections 412 and 512 of NAHA, as they apply to Indian housing units, will be addressed in a separate final rule.

Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of

Executive Order 12612, *Federalism*, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This rule pertains to certain PHAs that are subject to Annual Contributions Contracts (ACCs) under the U.S. Housing Act of 1937 and the requirements that they must meet in order to demolish or dispose of public housing.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being because it redefines previous demolition and disposition criteria so as to hold applications for demolition and disposition to more stringent requirements.

Information Collection

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0075.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does have a significant economic impact on a substantial number of small entities because the 1987 Act provides for substantial contributions of funds by the Federal government to assist in bearing the costs associated with the policy changes reflected in the rule. This cost sharing is, of course, available both to large and small PHAs whose demolition and disposition decisions are affected by the rule.

Semi-Annual Agenda of Regulations

This rule was listed as item number 1899 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57673) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 24 CFR part 970 which was published at 53 FR 30984 on August 17, 1988, is adopted as a final rule with the following changes:

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

1. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

2. Section 970.2 is revised to read as follows:

§ 970.2 Applicability.

(a) This part applies to public housing projects that are owned by public housing agencies (PHAs) and that are subject to Annual Contributions Contracts (ACCs) under the Act. It also applies to Section 23 bond-financed projects that have received modernization (i.e., Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant funds (CGP)). This part does not apply to the following:

(1) PHA-owned Section 8 housing, or housing leased under section 10(c) or section 23 of the Act, except for section 23 bond-financed projects that have received modernization funding under the CIAP or the Comprehensive Grant Programs;

(2) Demolition or disposition before the End of the Initial Operating Period (EIOP), as determined under the ACC, of property acquired incident to the development of a public housing project; (however, this exception shall not apply to dwelling units);

(3) The conveyance of public housing for the purpose of providing homeownership opportunities for lower income families under section 21 of the Act, the Turnkey III/IV or Mutual Help Homeownership Opportunity Programs, or other homeownership programs established under sections 5(h) or 6(c)(4)(D) of the Act and in existence before February 5, 1988, the date of enactment of the 1987 Act. (Where a plan submitted by the PHA for homeownership includes a component of demolition, the plan must meet the requirements of section 18 and this part.);

(4) The leasing of dwelling or nondwelling space incident to the normal operation of the project for public housing purposes, as permitted by the ACC;

(5) The reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without ''demolition'', as defined in § 970.3. (This includes the conversion of bedroom size, occupancy type, changing the status of unit from dwelling to nondwelling.);

(6) Easements, rights-of-way and transfers of utility systems incident to the normal operation of the development for public housing purposes, as permitted by the ACC;

(7) A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain; however, HUD requirements with respect to the replacement housing requirement for one-for-one dwelling units shall be followed (see HUD Handbook 7486.1, Demolition, Disposition and Conversion);

(8) Disposition of a public housing project in accordance with an approved homeownership program under title III of the United States Housing Act of 1937 (42 U.S.C. 1437p) (Hope 1); [1]

(9) Demolition after conveyance of a public housing project to a non-PHA entity in accordance with an approved homeownership program under title III of the United States Housing Act of 1937 (42 U.S.C. 1437p) (HOPE 1); and

(10) Units leased for non-dwelling purposes for one year or less.

(b) Demolition or disposition that was approved by HUD before February 5, 1988, but not carried out by that date, may be carried out according to the terms of such approval, without reference to subsequent amendments to this part and without obtaining any further HUD approval.

3. Section 970.3 is amended by adding in alphabetical order a definition for ''Chief Executive Officer of a unit of general local government'', to read as follows:

§ 970.3 Definitions.

* * * * *

Chief Executive Officer of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples

[1] In keeping with section 412(b) of the National Affordable Housing Act (Pub.L. 101–625), the provisions of this part do not apply to the disposition of a public housing project in accordance with an approved homeownership program under title III of the United States Housing Act of 1937, as added by section 411 of that legislation, (HOPE 1 for Public and Indian Housing Homeownership). In the case of a HOPE 1 proposal from a PHA involving partial or total demolition of units, this part does apply. HOPE 3 proposals involving public housing units approved prior to the 1992 Act are likewise covered by the requirements of section 18. [The 1992 Act took scattered-site single family public housing from under the requirements of HOPE 3 and moved it to HOPE 1.]

of the ''chief executive officer of a unit of general local government'' are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

* * * * *

4. Section 970.4 is amended by:

a. Removing paragraphs (b) and (c);

b. Redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively;

c. Revising newly redesignated paragraph (c); and

d. Adding new paragraphs (d), (e), (f), and (g), to read as follows:

§ 970.4 General requirements for HUD approval of applications for demolition or disposition.

* * * * *

(c) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in the Department's regulations at part 50 of this title. Where the site of the replacement housing is unknown at the time of submission of the application for demolition or disposition, the application shall contain an certification that the applicant agrees to assist HUD to comply with part 50 of this title and that the applicant shall:

(1) Supply HUD with all available, relevant information necessary for HUD to perform for each property any environmental review required by part 50 of this title;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to such program activities with respect to any eligible property, until HUD approval is received.

(d) The public housing agency has developed a replacement housing plan, in accordance with § 970.11, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such funding is not provided from other sources (*e.g.*, State or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

(e) The PHA has complied with the offering to resident organizations, as required under § 970.13.

(f) The PHA has prepared a certification regarding relocation of residents, in accordance with § 970.5(h)(1). If relocation is required, the PHA must submit a relocation plan in accordance with § 970.5.

(g) The PHA has made the appropriate certifications regarding site and neighborhood standards, in accordance with § 970.11(h) (2) and (4).

5. Section 970.5 is revised to read as follows;

§ 970.5 Displacement and relocation.

(a) *Relocation of displaced tenants on a nondiscriminatory basis.* Tenants who are to be displaced as a result of demolition or disposition must be offered opportunities to relocate to other comparable/suitable (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition) decent, safe, sanitary, and affordable housing (at rents no higher than permitted under the Act,) which is, to the maximum extent practicable, housing of their choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, familial status, or sex, in compliance with applicable Federal and State laws.

(b) *Relocation resources.* Relocation may be to other publicly assisted housing. Housing assisted under Section 8 of the Act, including housing available for lease under the Section 8 Housing Voucher Program, may also be used for relocation, provided the PHA ensures that displaced tenants are provided referrals to comparable/suitable relocation dwelling units where the family's share of the rent to owner following relocation will not exceed the total tenant payment, as calculated in accordance with § 813.107 of this title. If the PHA provides referrals to suitable/comparable relocation housing (comparable housing if the displacement is subject to the URA) and a tenant with a rental voucher elects to lease a housing unit where the family's share of rent to owner exceeds the amount calculated in accordance with § 813.107 of this title, the tenant will be responsible for the difference between the voucher payment standard and the rent to owner. If there are no units with rents at or below the voucher payment standard to which the PHA may refer families, then the PHA cannot use vouchers as a relocation housing source.

(c) *Applicability of URA rules.* (1) The displacement of any person (household, business or nonprofit organization) as a direct result of acquisition, rehabilitation, or demolition for a Federal or federally assisted project (defined in paragraph (j) of this section) is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. Therefore, if the PHA demolishes the property, or disposes of it to a Federal agency or to a person or entity that is acquiring the property for a federally assisted project, the demolition or acquisition is subject to the URA, and any person displaced (as described in paragraph (i) of this section) as a result of such action is eligible for relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24.

(2) As described in § 970.11, public housing units that are demolished must be replaced. Any person displaced (see paragraph (i) of this section) as a direct result of acquisition, demolition or rehabilitation for a project receiving Federal financial assistance (e.g., ACC) that provides the required replacement housing, must be provided relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24.

(d) *Applicability of antidisplacement plan.* If CDBG funds (part 570 of this title), or HOME funds (part 91 of this title) are used to pay any part of the cost of the demolition or the cost of a project (defined in paragraph (j) of this section) for which the property is acquired, the transaction is subject to the Residential Antidisplacement and Relocation Assistance Plan, as described in the cited regulations.

(e) *Relocation assistance for other displaced persons.* Whenever the displacement of a residential tenant (family, individual or other household) occurs in connection with the disposition of the real property, but the conveyance is not for a Federal or federally assisted project (and is, therefore, not covered by the URA), the displaced tenant shall be eligible for the following relocation assistance:

(1) *Advance written notice of the expected displacement.* The notice shall be provided as soon as feasible, describe the assistance to be provided and the procedures for obtaining the assistance; and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling and referrals to suitable, decent, safe, and sanitary replacement housing. Minority

persons also shall be given, if possible, referrals to suitable decent, safe and sanitary replacement dwellings that are not located in an area of minority concentration;

(3) Payment for actual reasonable moving expenses, as determined by the PHA;

(4) The opportunity to relocate to a suitable, decent, safe and sanitary dwelling unit at a rent that does not exceed that permitted under section 3(a) of the 1937 Act. All or a portion of the assistance may be provided under section 8 of the 1937 Act; and

(5) Such other Federal, State or local assistance as may be available.

(f) *Temporary relocation.* Residential tenants who will not be required to move permanently, but who must relocate temporarily (e.g., to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and the cost of reinstalling telephone and cable TV service.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The suitable, decent, safe and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provision for reimbursement of out-of-pocket expenses (see paragraph (f)(1) of this section).

(g) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a ''displaced person'' or the amount of the relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of the PHA's determination to the HUD Field Office.

(h) *Responsibility of PHA.* (1) The PHA shall certify that it will comply with the URA, implementing regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance, notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. (See definition of ''project'' in paragraph (j) of this section.) Such costs may also be paid for with funds available from other sources.

(3) The PHA shall maintain records in detail sufficient to demonstrate such compliance. The PHA shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(i) *Definition of displaced person.* (1) *General definition.* For purposes of this section, the term ''displaced person'' means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a Federal or federally assisted project.

(2) *Persons who qualify.* The term ''displaced person'' includes, but may not be limited to:

(i) A person who moves permanently from the real property after the PHA, or the person acquiring the property, issues a vacate notice to the person, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after the date of HUD approval of the demolition or disposition;

(ii) Any person who moves permanently, including a person who moves before the date of HUD approval of the demolition or disposition, if HUD or the PHA determines that the displacement resulted from the demolition or disposition of the property and is subject to the provisions of this section; or

(iii) A tenant-occupant of a dwelling who moves permanently from the building/complex on or after the date HUD approves the demolition or disposition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent and estimated average monthly utility costs that do not exceed that permitted under section 3(a) of the 1937 Act.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily and does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with such temporary relocation (including the cost of moving to and from the temporarily occupied unit, any increase in rent/utility costs, and the cost of reinstalling telephone and cable TV service).

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(3) *Persons not eligible.* Notwithstanding the provisions of paragraphs (i)(1) and (i)(2) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application for the demolition or disposition and, before commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a ''displaced person'' (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of an action covered by this section.

(j) *Definition of project.* For purposes of this section, the term ''project'' means one or more activities (e.g., real property acquisition, demolition or construction) paid for in whole or in part with Federal financial assistance. Two or more activities that are integrally related, each essential to the other(s), are considered one project, whether or not all of the component activities are federally assisted.

(k) *Definition of initiation of negotiations.* For purposes of providing the appropriate notices and determining the formula for computing a replacement housing payment under the URA to a tenant displaced from a

dwelling as a direct result of demolition or private owner acquisition, the term ''initiation of negotiations'' means HUD approval of the demolition or disposition under this part.

6. Section 970.6 is revised to read as follows:

§ 970.6 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this part, HUD will not approve an application for demolition unless HUD determines that one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes *and* no reasonable program of modifications, is feasible to return the project or portion of the project to useful life. The Department generally shall not consider a program of modifications to be reasonable if the costs of such program exceed 90 percent of total development cost (TDC). Major problems indicative of obsolescence are—

(1) As to physical condition: Structural deficiencies (e.g. settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (*e.g.*, severe erosion or flooding);

(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with part 50 of this title, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use;

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (*e.g.*, to reduce project density to permit better access by emergency, fire, or rescue services).

7. In § 970.7, paragraph (a)(2) is revised to read as follows:

§ 970.7 Specific criteria for HUD approval of disposition requests.

(a) * * *

(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. A PHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property.

* * * * *

8. Section 970.8 is amended by:

a. Revising paragraphs (f) and (g);

b. Redesignating existing paragraphs (h), (i), (j), (k), (l), and (m), as paragraphs (k), (l), (m), (n), (o), and (p), respectively; and

c. Adding new paragraphs (h), (i), and (j), to read as follows:

§ 970.8 PHA application for HUD approval.

* * * * *

(f) A replacement housing plan, as required under § 970.11, and approved by the unit of general local government which approval shall be provided by the chief executive officer of the jurisdiction in which the project is located (e.g., the mayor or the county executive), indicating approval of the replacement plan.

(g) Evidence of compliance with the offering to resident organizations, as required under § 970.13.

(h) A certification regarding relocation of residents, in accordance with § 970.5(h)(1).

(i) Appropriate certifications regarding site and neighborhood assessment, in accordance with §§ 970.11(h) (2), (3), and (4).

(j) Appropriate certification regarding compliance with environmental authorities, where required in accordance with § 970.4(c).

* * * * *

9. In § 970.9, paragraphs (b) introductory text and (b)(1) are revised, and a new paragraph (c) is added, to read as follows:

§ 970.9 Disposition of property; use of proceeds.

* * * * *

(b) Net proceeds, including any interest earned on the proceeds, (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows:

(1) For the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; and

* * * * *

(c) In the case of scattered-site housing of a public housing agency, the net proceeds of a disposition shall be used for the retirement of outstanding obligations issued to finance original development or modernization of the project, in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition. For example, in cases where debt has not been forgiven, if a development project of ten units that cost $100,000 has one unit disposed of for $10,000, then there would be no net proceeds after paying off the proportional cost ($100,000 divided by 10=$10,000/unit) of the project. If, however, the unit was disposed of and net proceeds were $12,000, there would be $2,000 available that the PHA would use for the provision of housing assistance for lower income families. Where debt has been forgiven, all the net proceeds may be used by the PHA for the provision of low income housing assistance.

10. Section 970.11 is revised to read as follows:

§ 970.11 Replacement housing plan.

(a) *One-for-one replacement.* HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable rental dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application, except as provided in paragraph (j) of this section. A replacement housing plan may provide for the location of the replacement housing outside the political boundaries of the locality of the PHA, provided all relevant program requirements are satisfied including the approval of the replacement housing plan by the unit of general local government in which the project being demolished or disposed is located. In order to assure that all program requirements are satisfied, the PHA must enter into any necessary agreements, including where applicable, the execution of a Cooperation Agreement between the PHA and the locality in which the replacement housing will be located, prior to submission of the replacement housing plan to HUD for approval. In addition, the PHA must ensure that such agreements provide that the families selected for occupancy in the replacement housing will be families who would have been eligible for occupancy in the replacement housing if it had been replaced in the same locality as the project being demolished

or disposed. The plan must include any one or combination of the following:

(1) The acquisition or development of additional public housing dwelling units;

(2) The use of 15-year project-based assistance under section 8, to the extent available, or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under section 8 having a term of not less than 5 years;

(3) The use of not less than 15-year project-based assistance under other Federal programs, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under other Federal programs having a term of not less than 5 years. (NOTE: In the case of 15-year project based assistance under other Federal programs, the Department has determined that low-income housing credits under Section 42 of the Internal Revenue Service Code is a Federal program providing 15-year project-based assistance and, therefore, qualifies as a source of replacement housing. Any replacement housing plan proposing the use of these credits must assure that the low-income housing units in the low-income housing credit project which are designated as replacement housing will be reserved for low-income families for the requisite period. Units which at the time of allocation of the credit are also receiving Federal assistance under Section 8 (except tenant-based assistance) or Section 23 of the Act, or Section 236, 221(d)(3) BMIR or Section 221(d)(5) of the National Housing Act (12 U.S.C. 1701 *et seq.*), or Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or other similar Federal program, are not eligible as replacement housing under paragraph (a)(3) of this section.);

(4) The acquisition or development of dwelling units assisted under a State or local government program that provides for project-based rental assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under section (8)(b)(1) of the Act; or

(5)(i) The use of 15-year tenant-based assistance under section 8 of the Act, (excluding rental vouchers under section 8(o)), under the conditions described in paragraph (b) of this section, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of tenant-based assistance under section 8 (excluding rental vouchers under section 8(o)) having a term of not less than 5 years.

(ii) However, in the case of an application proposing demolition or disposition of 200 or more units, not less than 50 percent of the dwelling units for replacement housing shall be provided through the acquisition or development of additional public housing dwelling units or through project-based assistance, and not more than 50 percent of the additional dwelling units shall be provided through tenant-based assistance under section 8 (excluding vouchers) having a term of not less than 5 years. The requirements of § 970.11(b) do not apply to applications for demolition or disposition of 200 or more units that propose the use of tenant-based assistance under section 8 having a term of not less than 5 years for the replacement of not more than 50 percent of the units to be demolished or disposed of.

(b) *Conditions for use of tenant-based assistance.* Fifteen-year tenant-based assistance under section 8 may be approved under the replacement plan only if provisions listed in paragraphs (b)(1) through (3) of this section are met.

(1) There is a finding by HUD that replacement with project-based assistance (including public housing, as well as other types of project-based assistance under paragraph (a) of this section) is not feasible under the feasibility standards established for project-based assistance; that the supply of private rental housing actually available to those who would receive tenant-based assistance under the plan is sufficient for the total number of rental certificates and rental vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full 15-year term of the assistance;

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which must include rates of participation by landlords in the Section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing housing meeting the Section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for public housing or housing assistance under Section 8; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; an assessment of compliance with civil rights laws and related program requirements; and such additional data as HUD may determine to be relevant in particular circumstances; and

(3) To justify a finding under paragraph (b)(1) of this section, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions for tenant-based assistance will be met, based on the pertinent data from the local housing market, as prescribed in paragraph (b)(2) of this section. The determination as to the lack of feasibility of project-based assistance must be based on the standards for feasibility stated in the respective regulations which govern each type of eligible project-based program identified in paragraph (a) of this section, including public housing under paragraph (a)(1) of this section as well as the other types of eligible Federal, State and local programs of project-based assistance under paragraphs (a)(2) through (4) of this section. A finding of lack of feasibility may thus be made only if the applicable feasibility standards cannot be met under any of those project-based programs, or any combination of them. For example, with regard to additional public housing development, feasibility would be determined by reference to part 941 of this chapter and any other applicable regulations and requirements, to include consideration of such factors as local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies. With regard to Section 8 programs involving rehabilitation, an example of a major feasibility factor would be the prospects for participation of private owners willing to meet the rehabilitation requirements.

(c) *Approval of unit of general local government.* The plan must be approved by the unit of general local government in which the project proposed for demolition or disposition is located, which approval shall be provided by the chief executive officer (e.g., the mayor or the county executive).

(d) *Schedule for replacement housing plan.* (1) The plan must include a schedule for carrying out all its terms within a period consistent with the size of the proposed demolition or disposition, except that the schedule for completing the plan shall in no event exceed 6 years from the date specified

to begin plan implementation, which is the date of HUD approval of the demolition or disposition application.

(2) Where demolition or disposition will occur in phases, the schedule shall provide for completing the plan within six years from the date of the HUD approval letter for a specific demolition or disposition action requested. ''Completion'' does not mean that the replacement housing must be built or rehabilitated within the six years. For replacement units developed under the public housing development program, the completion of the plan would be units that have reached the stage of notice to proceed for conventional units and contract of sale for Turnkey units.

(e) *Housing the same number of individuals and families.* The plan must include a method which ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs, as determined by the PHA and reviewed and approved by HUD as a part of the demolition or disposition application.

(f) *Relocation plan.* Where existing occupants will be displaced, the plan must include a relocation plan in accordance with §§ 970.5 and 970.8(d).

(g) *Assurances regarding relocation.* The plan must prevent the taking of any action to demolish or dispose of any unit until the tenant of the unit is relocated in accordance with § 970.5. This does not preclude actions permitted under § 970.12, actions required under this part for development and submission of the PHA's application for HUD approval of demolition or disposition, or actions required to carry out a relocation plan which has been approved by HUD in accordance with §§ 970.5 and 970.8(d).

(h) *Site and neighborhood standards assessment.* With respect to replacement housing, PHAs must comply with site and neighborhood standards, as follows:

(1) If units under the Public Housing Development Program or the Section 8 project-based assistance program have been requested as replacement housing in the PHA's application, except when the PHA plans to build back on the same site, the site and neighborhood standards applicable for those programs will apply and be assessed at the appropriate time as required by that program rule or handbook and not at the time of the demolition or disposition application. The PHA must certify to HUD at the time of application for demolition or disposition, that once the site is identified, the PHA will comply with the site and neighborhood standards applicable for those programs.

(2) If units under the Public Housing Development Program or the Section 8 project-based assistance program have been requested as replacement housing in the PHA's application and the PHA plans to build back on the same site, the PHA shall comply with the site and neighborhood standards applicable for those programs when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(3)(i) If the replacement housing units are to be provided under a State or local program, and the site is known (including building back on the same site), the PHA is required to comply with site and neighborhood standards comparable to part 882 of this title when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(ii) However, if the site is not known, the PHA shall include in the application for demolition or disposition a certification that it will comply with site and neighborhood standards comparable to part 882 of this title once the site is known.

(iii) In the case of replacement housing funded by State or local government funds, the PHAs must demonstrate in the application that it has a commitment for funding the replacement housing.

(4)(i) If the replacement housing units are to be provided out of the proceeds of the disposition of public housing property, and the site is known (including building back on the same site), the PHA is required to comply with site and neighborhood standards comparable to part 941 of this chapter (or under part 882 of this title in the case of use of Section 8 assistance) when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(ii) However, if the site is not known, the PHA shall include in the application for demolition or disposition a certification that it will comply with site and neighborhood standards comparable to part 941 of this chapter or under part 882 of this title once the site is known.

(i) *Assurances regarding accessibility.* The plan must contain assurances that any replacement units acquired, newly constructed or rehabilitated will meet the applicable accessibility requirements set forth in § 8.25 of this title.

(j) *Exception for replacement housing in cases of demolition.* In any 5-year period, a public housing agency may *demolish* not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned and operated by the public housing agency, without providing an additional dwelling unit for each public housing unit to be *demolished*, but only if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents. If the PHA elects to use this exception, it shall meet all other requirements of this part except § 970.11.

(Approved by the Office of Management and Budget under control number 2577–0075.)

11. Existing § 970.13 is redesignated as § 970.14, and a new § 970.13 is added, to read as follows:

§ 970.13 Resident organization opportunity to purchase.

(a) *Applicability.* (1) This section applies to applications for demolition or disposition of a development which involve dwelling units, nondwelling spaces (e.g. administration and community buildings, maintenance facilities), and excess land.

(2) The requirements of this section do not apply to the following cases which it has been determined do not present appropriate opportunities for resident purchase:

(i) The PHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

(ii) The local government has condemned the property proposed for demolition;

(iii) A local government agency has determined and notified the PHA that units must be demolished to allow access to fire and emergency equipment;

(iv) The PHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long term viability of the development or the PHA (but in no case should this be used cumulatively to avoid Section 412 requirements);

(v) A public body has requested to acquire vacant land that is less than 2 acres in order to build or expand its services (e.g., a local government wishes to use the land to build or establish a police substation); or

(vi) PHA seeks disposition outside the public housing program to privately finance or otherwise develop a facility to benefit low-income families (e.g., day care center, administrative building, other types of low-income housing).

(3) In the situations listed in paragraph (a) of this section, the PHA may proceed to submit its request to demolish or dispose of the property, or the portion of the property, to HUD, in accordance with Section 18 of the United States Housing Act of 1937 and 24 CFR part 970 without affording an opportunity for purchase by a resident organization. However, resident consultation would be required in accordance with § 970.4(a). The PHA must submit written documentation, on official stationery, with date and signatures to justify paragraphs (a)(2)(i), (ii), (iii), (iv), and (v) of this section. Examples of such documentation include:

(i) A certification from a local agency, such as the fire or health department, that a condition exists in the development that is an imminent threat to residents; or

(ii) A copy of the condemnation order from the local health department. If, however, at some future date, the PHA proposes to sell the remaining property described in paragraphs (a)(2)(i) through (iii) of this section, the PHA will be required to comply with this section.

(b) *Opportunity for residents to organize.* Where the affected development does not have an existing resident council, resident management corporation or resident cooperative at the time of the PHA proposal to demolish or dispose of the development or a portion of the development, the PHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of ''reasonable effort'' at a minimum include one of the following activities: convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. The Department will not approve any application that cannot demonstrate that the PHA has allowed at least 45 days for the residents to organize a resident organization. The PHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under § 970.4(a).

(c) *Established Organizations.* Where there are duly formed resident councils, resident management corporation, or resident cooperative at the affected development, the PHA shall follow the procedures beginning in paragraph (d) of this section. Where the affected development is fully or partially occupied, the residents must be given the opportunity to form under the procedures in paragraph (b) of this section.

(d) *Offer of sale to resident organizations.* (1) The PHA shall make the formal offer for sale which must include, at a minimum, the information listed in this paragraph (d). All contacted organizations shall have 30 days to express an interest in the offer. The PHA must offer to sell the property proposed for demolition or disposition to the resident management corporation, the resident council or resident cooperative of the affected development under at least as favorable terms and conditions as the PHA would offer it for sale to another purchaser:

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead-based paint test results), and occupancy status (e.g., percent occupancy).

(ii) In the case of disposition, a copy of the appraisal of the property and any terms of sale.

(iii) A PHA disclosure and description of plans proposed for reuse of land, if any, after the proposed demolition or disposition.

(iv) An identification of available resources (including its own and HUD's) to provide technical assistance to the resident management corporation, resident council or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use.

(v) Any and all terms of sale that the PHA requires for the Section 18 action. (If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the PHA may consider accepting the offer).

(vi) A date by which the resident management corporation, resident council or resident cooperative of the affected development must respond to the HA's offer to sell the property proposed for demolition or disposition, which shall be no less than 30 days from the date of the official offering of the PHA. The response from the resident management corporation, resident council or resident cooperative of the affected development shall be in the form of a letter expressing its interest in accepting the PHAs written offer.

(vii) A statement that the resident council, resident management corporation, and resident cooperative of the affected development will be given 60 days to develop and submit a proposal to the PHA to purchase the property and to obtain a firm financial commitment. It shall explain that the PHA shall approve the proposal from the resident council, resident management corporation or resident cooperative of the affected development, if it meets the terms of sale. However, the statement shall indicate that the PHA can consider accepting an offer from the resident council, resident management corporation or resident cooperative of the affected development that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership. The statement shall explain that if the PHA receives more than one proposal from a resident council, resident management corporation or resident cooperative at the affected development, the PHA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the terms of sale, the PHA shall chose the best proposal.

(2) After the 30 day time frame for the resident council, resident management corporation, or resident cooperative of the affected development to respond to the notification letter has expired, the PHA is to prepare letters to those organizations that responded affirmatively inviting them to submit a formal proposal to purchase the property. The organization has 60 days from the date of its affirmative response to prepare and submit a proposal to the PHA that provides all the information requested in paragraph (g) of this section and meets the terms of sale.

(e) *PHA Review of Proposals.* The PHA has up to 60 days from the date of receipt of the proposal(s) to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated

commensurate public benefit or for the purposes of homeownership), the PHA may consider accepting the offer. If the terms of sale are met, within 14 days of the PHA's final decision, the PHA shall notify the resident management corporation, resident council or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

(f) *Appeals.* The resident management corporation, resident council or resident cooperative of the affected development has the right to appeal the PHA's decision to the HUD field office. A letter requesting an appeal has to be made within 30 days of the decision by the PHA. The request should include copies of the proposal and any related correspondence. The field office will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the PHA and the resident management corporation, resident council or resident cooperative of the affected development.

(g) *Contents of Proposal.* (1) The proposal from the resident management corporation, resident council or resident cooperative of the affected development shall at a minimum include the following:

(i) The length of time the organization has been in existence;

(ii) A description of current or past activities which demonstrate the organization's organizational and management capability or the planned acquisition of such capability through a partner or other outside entities;

(iii) A statement of financial capability;

(iv) A description of involvement of any non-resident organization (non-profit, for profit, governmental or other entities), if any, the proposed division of responsibilities between these two, and the non-resident organization's financial capabilities;

(v) A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

(vi) A plan for the use of the property;

(vii) The proposed purchase price in relation to the appraised value;

(viii) Justification for purchase at less than the fair market value in accordance with § 970.9, if appropriate;

(ix) Estimated time schedule for completing the transaction;

(x) The response to the PHA's terms of sale;

(xi) A resolution from the resident organization approving the proposal; and

(xii) A proposed date of settlement, generally not to exceed six months from the date of PHA approval of the proposal, or such period as the PHA may determine to be reasonable.

(2) If the proposal is to purchase the property for homeownership under 5(h) or HOPE 1, then the requirements of Section 18 of the United States Housing Act of 1937 and 24 CFR part 970 do not apply, but the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 57 FR 1522, or the section 5(h) regulation, as set forth in parts 905 and 906 of this chapter. In order for a PHA to consider a proposal to purchase under section 412, using homeownership opportunities under section 5(h) or HOPE 1, the resident council, resident management corporation or resident cooperative of the affected development shall meet the provisions of this rule, including paragraphs (g)(1)(i) through (g)(1)(xii) of this section.

(3) If the proposal is to purchase the property for other than the aforementioned homeownership programs or for uses other than homeownership, then the proposal must meet all the disposition requirements of Section 18 of the United States Housing Act of 1937 and 24 CFR part 970.

(h) *PHA obligations.* (1) Prepare and disperse the formal offer of sale to the resident council, resident management corporation and resident cooperative of the affected development.

(2) Evaluate proposals received and make the selection based on the considerations set forth in paragraph (b) of this section. Issuance of letters of acceptance and rejection.

(3) Prepare certifications, where appropriate, as discussed in paragraph (i)(3) of this section.

(4) The PHA shall comply with its obligations under § 970.4(a) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The PHA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified resident management corporation, resident council or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

(i) *PHA application submission requirements for proposed demolition or disposition.* (1) If the proposal from the resident organization is rejected by the PHA, and either there is no appeal by the organization or the appeal has been denied, the PHA shall submit its demolition or disposition application to HUD in accordance with Section 18 of the United States Housing Act of 1937 and part 970 of this chapter. The demolition or disposition application must include complete documentation that the requirements of this section have been met. PHAs must submit written documentation that the resident council, resident management corporation and tenant cooperative of the affected development have been apprised of their opportunity to purchase under this section. This documentation shall include:

(i) A copy of the signed and dated PHA notification letter(s) to each organization informing them of the PHA's intention to submit an application for demolition or disposition, the right to purchase; and

(ii) The responses from each organization.

(2) If the PHA accepts the proposal of the resident organization, the PHA shall submit a disposition application in accordance with Section 18 of the United States Housing Act of 1937 and part 970 of this chapter, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(3) HUD will not process an application for demolition or disposition unless the PHA provides the Department with one of the following:

(i) Where no resident management corporation, resident council or resident cooperative exists in the affected development and the residents of the affected development have not formed a new organization in accordance with paragraph (b) of this section, a certification from either the executive director or the board of commissioners stating that no such organization(s) exists and documentation that a reasonable effort to inform residents of their opportunity to organize has been made; or

(ii) Where a resident management corporation, resident council or resident cooperative exists in the affected development one of the following, either paragraph (i)(3)(ii)(A) or paragraph (i)(3)(ii)(B) of this section:

(A) A board resolution or its equivalent from each resident council, resident management corporation or resident cooperative stating that such organization has received the PHA letter, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the demolition or disposition application. The response should clearly state that the resolution was adopted by the entire organization at a formal meeting; or

(B) A certification from the executive director or board of commissioners of the PHA that the thirty (30) day timeframe has expired and no response was received to its offer.

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Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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