

### § 970.33

housing location if the number of the replacement public housing units is significantly fewer than the number of units demolished. Such development must comply with 24 CFR part 905, Public Housing Capital Fund Program, as well as 24 CFR part 941.

#### § 970.33 Effect on the Operating Fund Program and Capital Fund Program.

The provisions of 24 CFR part 990, the Public Housing Operating Fund Program, and 24 CFR part 905, the Public Housing Capital Fund Program, apply.

#### § 970.35 Reports and records.

(a) After HUD approval of demolition or disposition of all or part of a project, the PHA shall provide information on the following:

(1) Actual completion of each demolition contract by entering the appropriate information into HUD's applicable data system, or providing the information by another method HUD may require, within a week of making the final payment to the demolition contractor, or expending the last remaining funds if funded by force account;

(2) Execution of sales or lease contracts by entering the appropriate information into HUD's applicable data system, or providing the information by another method HUD may require, within a week of execution;

(3) The PHA's use of the proceeds of sale by providing a financial statement showing how the funds were expended by item and dollar amount;

(4) Amounts expended for closing costs and relocation expenses, by providing a financial statement showing this information for each property sold; and

(5) Such other information as HUD may from time to time require.

(b) [Reserved]

## PART 971—ASSESSMENT OF THE REASONABLE REVITALIZATION POTENTIAL OF CERTAIN PUBLIC HOUSING REQUIRED BY LAW

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#### APPENDIX TO PART 971—METHODOLOGY OF COMPARING COST OF PUBLIC HOUSING WITH COST OF TENANT-BASED ASSISTANCE

AUTHORITY: Pub. L. 104-134; 42 U.S.C. 3535(d).

SOURCE: 62 FR 49576, Sept. 22, 1997, unless otherwise noted.

#### § 971.1 Purpose.

Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104-134, approved April 26, 1996) ("OCRA") requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

#### § 971.3 Standards for identifying developments.

(a) PHAs shall use the following standards for identifying developments or portions thereof which are subject to section 202's requirement that PHAs develop and carry out plans for the removal over time from the public housing inventory. These standards track section 202(a) of OCRA. The development, or portions thereof, must:

(1) *Be on the same or contiguous sites.* (OCRA Sec. 202(a)(1)). This standard and the standard set forth in paragraph (a)(2) of this section refer to the actual number and location of units, irrespective of HUD development project numbers.

(2) *Total more than 300 dwelling units.* (OCRA Sec. 202(a)(2)).

(3) *Have a vacancy rate of at least ten percent for dwelling units not in funded,*

*on-schedule modernization.* (OCRA Sec. 202(a)(3)). For this determination, PHAs and HUD shall use the data the PHA relied upon for its last Public Housing Management Assessment Program (PHMAP) certification, as reported on the Form HUD-51234 (Report on Occupancy), or more recent data which demonstrates improvement in occupancy rates. Units in the following categories shall not be included in this calculation:

- (i) Vacant units in an approved demolition or disposition program;
- (ii) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;
- (iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and
- (iv) Units that are occupied by employees of the PHA and units that are utilized for resident services.

(4) *Have an estimated cost of continued operation and modernization of the developments as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).* (OCRA Sec. 202(a)(5)).

(i) For purposes of this determination, the costs used for public housing shall be those necessary to produce a revitalized development as described in the paragraph (a)(5) of this section.

(ii) These costs, including estimated operating costs, modernization costs and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) Both the method to be used and an example are included in the Appendix to this part.

(5) *Be identified as distressed housing that the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of*

*household income.* (OCRA Sec. 202(a)(4)). [See § 971.5.]

(b) Properties meeting the standards set forth in paragraphs (a)(1) through (3) of this section will be assumed to be "distressed" unless the PHA can show that the property fails the standard set forth in paragraph (a)(3) of this section for reasons that are temporary in duration and are unlikely to recur.

(c) Where the PHA will demolish all of the units in a development, or the portion thereof, that is subject to section 202, section 202 requirements will be satisfied once the demolition occurs and its standards will not be applied further to the use of the site.

(d) PHAs will meet the test for assuring long-term viability of identified housing only if it is probable that, after reasonable investment, for at least twenty years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments which clearly should disqualify the site from continuation as public housing.

#### § 971.5 Long-term viability.

(a) *Reasonable investment.* (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost limit for the units proposed to be revitalized (100 percent of the total development cost limit for any "infill" new construction subject to this regulation). The revitalization cost estimate used in the PHA's most recent comprehensive plan for modernization is to be used for this purpose, unless a PHA demonstrates or HUD determines that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this

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part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and already available. In addition to other resources already available to the PHA, a PHA may assume that future formula funds provided through the Comprehensive Grant Program are available for this purpose, provided that they are sufficient to permit completion of the revitalization within the statutory five year time frame. (Comprehensive plans must be amended accordingly.)

(b) *Density.* Density reduction measures would have to result in a public housing community with a density approaching that which prevails in the community for similar types of housing (typically family), or a lower density. If the development's density already meets this description, further reduction in density is not a requirement.

(c) *Income mix.* (1) Measures generally will be required to broaden the range of resident incomes to include over time a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of median area income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

### §971.7 Plan for removal of units from public housing inventories.

(a) *Time frames.* Section 202 is a continuing requirement, and the Secretary will establish time frames for submission of necessary information annually

through publication of a FEDERAL REGISTER notice.

(b) *Plan for removal.* With respect to any development that meets all of the standards listed, the PHA shall develop a plan for removal of the affected public housing units from the inventory. The plan should consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and shall provide for relocation from the units as soon as possible. For planning purposes, PHAs shall assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan shall include:

(1) A listing of the public housing units to be removed from the inventory;

(2) The number of households to be relocated, by bedroom size;

(3) Identification and obligation status of any previously approved CIAP, modernization, or major reconstruction funds for the distressed development and PHA recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(4) The relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) A schedule for relocation and removal of units from the public housing inventory;

(6) Provision for notifying families residing in the development, in a timely fashion, that the development shall be removed from the public housing inventory; informing such families that they will receive tenant-based or project-based assistance; providing any necessary counselling with respect to the relocation, including a request for any necessary counseling funds; and assuring that such families are relocated as necessary to other decent, safe, sanitary and affordable housing which is, to the maximum extent possible, housing of their choice;

(7) The displacement and relocation provisions set forth in 24 CFR 970.5.

(8) A record indicating compliance with the statute's requirements for consultation with applicable public

housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 971.9.

(c) Section 18 of the United States Housing Act of 1937 shall not apply to demolition of developments removed from PHA inventories under this section, but shall apply to any proposed dispositions of such developments or their sites. HUD's review of any such disposition application will take into account that the development has been required to be removed from the PHA's inventory.

(d) For purposes of determining operating subsidy eligibility under the Performance Funding System (PFS), the submitted plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC and approval (or acceptance). The PHA will receive written notification that the plan has been approved (or accepted). Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this chapter and also will be provided the phase-down of subsidy pursuant to § 990.114 of this chapter.

(Approved by the Office of Management and Budget under control number 2577-0210)

#### **§ 971.9 Tenant and local government consultation.**

(a) PHAs are required to proceed in consultation with affected public housing residents. PHAs must provide copies of their submissions complying with §§ 971.3(a) (1) through (3) to the appropriate tenant councils and resident groups before or immediately after these submissions are provided to HUD.

(b) PHAs must:

(1) Hold a meeting with the residents of the affected sites and explain the requirements of section 202 of OCRA;

(2) Provide an outline of the submission(s) complying with § 971.3(a) (4) and (5) to affected residents; and

(3) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(c) PHAs must prepare conversion plans in consultation with affected tenants and must:

(1) Hold a meeting with affected residents and provide draft copies of the plan; and

(2) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(d) The conversion plan must be approved by the local officials as not inconsistent with the Consolidated Plan.

#### **§ 971.11 HOPE VI developments.**

Developments with HOPE VI implementation grants that have approved HOPE VI revitalization plans will be treated as having shown the ability to achieve long-term viability with reasonable revitalization plans. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans will be taken with consideration of the standards for section 202. Developments with HOPE VI planning or implementation grants, but without approved HOPE VI revitalization plans, are fully subject to section 202 standards and requirements.

#### **§ 971.13 HUD enforcement authority.**

Section 202 provides HUD authority to ensure that certain distressed developments are properly identified and removed from PHA inventories. Specifically, HUD may:

(a) Direct a PHA to cease additional spending in connection with a development which meets or is likely to meet the statutory criteria, except as necessary to ensure decent, safe and sanitary housing until an appropriate course of action is approved;

(b) Identify developments which fall within the statutory criteria where a PHA has failed to do so properly;

(c) Take appropriate actions to ensure the removal of developments from the inventory where the PHA has failed to adequately develop or implement a plan to do so; and

(d) Authorize or direct the transfer of capital funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects

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funds) to tenant-based assistance or appropriate site revitalization for the agency.

### APPENDIX TO PART 971—METHODOLOGY OF COMPARING COST OF PUBLIC HOUSING WITH COST OF TENANT-BASED ASSISTANCE

#### I. PUBLIC HOUSING

The costs used for public housing shall be those necessary to produce a revitalized development as described in the next paragraph. These costs, including estimated operating costs, modernization costs and costs to address accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost. The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis. The costs shall be expressed in current dollar terms for the period for which the most recent Section 8 costs are available.

##### A. OPERATING COSTS

1. The proposed revitalization plan must indicate how unusually high current operating expenses (e.g., security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration and management structure of the revitalized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (PILOT) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the number of units occupied by households. For example, if a development will have 1,000 units occupied by households and will have \$300,000 monthly in non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and \$100,000 monthly in utility costs paid by the authority and \$50,000 monthly in utility allowances that are deducted from tenant rental payments to the

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authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is \$450—the sum of \$300 per unit in non-utility costs, \$100 per unit in direct utility costs, and \$50 per unit in utility allowance costs.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical re-configuration that will result from modernization, any planned changes in the surrounding neighborhood and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized development are plausible, when the per-unit operating cost of the renovated development is more than ten percent lower than the current per-unit operating cost of the development, then the plan should detail how the revitalized development will achieve its reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than twenty percent, then these costs will be divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are \$6.6 million and it has 1,000 occupied units and 200 vacant units not fully funded under PFS (or a 17 percent overall vacancy rate), then the \$6.6 million is divided by 1100—1000 plus 50 percent of 200—to give a per unit figure of \$600 per unit month. By this example, the current costs of \$600 per occupied unit are at least ten percent higher than the projected costs per occupied unit of \$450 for the revitalized development, and the reduction in costs would have to be detailed.

b. If the development currently lacks reliable cost data or has a vacancy rate of twenty percent or higher, then its current per unit costs will be estimated as follows. First, the per unit cost of the entire authority will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all vacant units not fully funded under PFS. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor

of the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors: .70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be  $1.125 - 500 \times 1.0 + 500 \times 1.25$ , the sum divided by 1,000. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per unit of \$500 and a bedroom adjustment factor of .90, and suppose that the development had a bedroom adjustment factor of 1.125. Then, the development's estimated current monthly operating cost per occupied unit would be \$625—or \$500 times 1.25 (the ratio of 1.125 to .90).

#### B. MODERNIZATION

The cost of modernization is the initial revitalization cost to meet viability standards, that cost amortized over twenty years (which is equivalent to fifteen years at a three percent annual real capital cost for the initial outlay). Expressed in monthly terms, the modernization cost is divided by 180 (or 15 years times 12 months). Thus, if the initial modernization outlay to meet viability standards is \$60 million for 1,000 units, then the per-unit outlay is \$60,000 and the amortized modernization cost is \$333 per unit per month (or \$60,000 divided by 180). However, when revitalization would be equivalent to new construction and the PHA thus is permitted to amortize the proposed cost over thirty years (which is equivalent to twenty-two and one-half years at a three percent annual real capital cost to the initial outlay), the modernization cost will be divided by 270, the product of 22.5 and 12, to give a cost per unit month of \$222.

#### C. ACCRUAL

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits for the area and applying them to the development's

structure type and bedroom distribution after modernization, then subtracting from that figure half the per-unit cost of modernization, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development will remain a walkup structure containing five hundred two-bedroom occupied and five hundred three-bedroom occupied units, if HUD's Total Development Cost limit for the area is \$70,000 for two-bedroom walkup structures and \$92,000 for three-bedroom walkup structures, and if the per unit cost of modernization is \$60,000, then the estimated monthly cost of accrual per occupied unit is \$85. This is the result of multiplying the value of \$51,000—the cost guideline value of \$81,000 minus half the modernization value of \$60,000—by .02 and then dividing by 12.

#### D. OVERALL COST

The overall current cost for continuing the development as public housing is the sum of its monthly post-revitalization operating cost estimates, its monthly modernization cost per occupied unit, and its estimated monthly accrual cost per occupied unit. For example, if the operating costs per occupied unit month is \$450 and the amortized modernization cost is \$333 and the accrual cost is \$85, the overall monthly cost per occupied unit is \$868.

#### II. TENANT-BASED ASSISTANCE

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size; plus the administrative fee applicable to newly funded Section 8 rental assistance during the year used for calculating public housing operating costs (e.g., the administrative fee for units funded from 10/1/95 through 9/30/96 is based on column C of the January 24, 1995 FEDERAL REGISTER, at 60 FR 4764, and the administrative fee for units funded from 10/1/96 through 9/30/97 is based on column B of the March 12, 1997 FEDERAL REGISTER, at 62 FR 11526); plus the amortized cost of demolishing the occupied public housing units, where the cost per unit is not to exceed ten percent of the TDC prior to amortization. For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market Rent in the area is \$600 for two bedroom units and is \$800 for three bedroom units and if the administrative fee comes to \$46 per unit, and if the cost of demolishing 1000 occupied units is \$5 million, then the per unit monthly cost of tenant based assistance is \$774 (\$700 for the unit-weighted average of Fair Market Rents,

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or 500 times \$600 plus 500 times \$800 with the sum divided by 1,000; plus \$46 for the administrative fee; plus \$28 for the amortized cost of demolition and tenant relocation (including any necessary counseling), or \$5000 per unit divided by 180 in this example). This Section 8 cost would then be compared to the cost of revitalized public housing development—in the example of this section, the revitalized public housing cost of \$868 monthly per occupied unit would exceed the Section 8 cost of \$774 monthly per occupied unit by 12 percent. The PHA would have to prepare a conversion plan for the property.

### III. DETAILING THE SECTION-8 COST COMPARISON: A SUMMARY TABLE

The Section 8 cost comparison methods are summarized, using the example provided in this section III.

A. Key Data, Development: The revitalized development has 1000 occupied units. All of the units are in walkup buildings. The 1000 occupied units will consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are \$300,000 per month in non-utility costs, \$100,000 in utility costs paid by the PHA, and \$50,000 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost for revitalization is \$60,000,000, or \$60,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition and relocation of the 1000 occupied units is \$5 million, or \$5000 per unit, based on recent experience.

B. Key Data, Area: The unit total development cost limit is \$70,000 for two-bedroom walkups and \$92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is \$600 and the three-bedroom Fair Market Rent is \$800. The applicable monthly administrative fee amount, in column B of the March 12, 1997 FEDERAL REGISTER Notice, at 62 FR 11826, is \$46.

C. Preliminary Computation of the Per-Unit Average Total Development Cost of the Development: This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at \$70,000 and five hundred units are valued at \$92,000 and the unit-weighted average is \$81,000.

D. Current Per Unit Monthly Occupied Costs of Public Housing:

1. Operating Cost—\$450 (total monthly costs divided by occupied units: in this example, the sum of \$300,000 and \$100,000 and \$50,000—divided by 1,000 units).

2. Amortized Modernization Cost—\$333 (\$60,000 per unit divided by 180 for standards less than those of new construction).

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3. Estimated Accrual Cost—\$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, \$51,000 times .02 and then divided by 12).

4. Total per unit public housing costs—\$868.

E. Current per unit monthly occupied costs of section 8:

1. Unit-weighted Fair Market Rents—\$700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times \$600 plus 500 times \$800, divided by 1000).

2. Administrative Fee—\$46.

3. Amortized Demolition and Relocation Cost—\$28 (\$5000 per unit divided by 180).

4. Total per unit section 8 costs—\$774.

F. Result: In this example, because revitalized public housing costs exceed current Section 8 costs, a conversion plan for the property would be required.

## PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

### Subpart A—Required Conversion of Public Housing Developments

#### PURPOSE; DEFINITION OF "CONVERSION"

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