

Dated: August 11, 2003.

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[FR Doc. 03-23026 Filed 9-16-03; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR-4476-F-04]

RIN 2577-AC02

Voluntary Conversion of Developments From Public Housing Stock

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

ACTION: Final rule.

SUMMARY: This final rule furthers HUD's implementation of section 533 of the Quality Housing and Work Responsibility Act of 1998. Section 533 authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development or a portion of the development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. Since the cost methodology necessary to conduct the cost comparisons for voluntary conversions has not yet been finalized, PHAs may not undertake conversions under this final rule until the effective date of the cost methodology. HUD is publishing a proposed rule elsewhere in today's **Federal Register**, to provide the public with an opportunity to comment on the methodology that HUD proposes be used for the required cost comparisons. This final rule follows publication of a July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: March 15, 2004.

FOR FURTHER INFORMATION CONTACT:

Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4116, Washington, DC 20410-5000; telephone (202) 708-0713 (this is not a toll-free

telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. The July 23, 1999, Proposed Rule

On July 23, 1999 (64 FR 40240), HUD published for public comment a proposed rule to implement section 533 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105-276, approved October 21, 1998) (QHWRA).

Section 533 of QHWRA amended section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). As amended, section 22 authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development or a portion of a development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost effective, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. In the July 23, 1999, proposed rule, HUD proposed to implement the voluntary conversion requirements through the creation of a new 24 CFR part 972, subpart B.

In addition to permitting voluntary conversions, QHWRA revised the provisions governing the program of required conversions. Section 537 of QHWRA added a new section 33 to the 1937 Act, entitled "Required Conversion of Distressed Public Housing to Tenant-Based Assistance." A separate proposed rule was published on July 23, 1999 (64 FR 40232), to implement these provisions through a new 24 CFR 972, subpart A. The final rule that will make these proposed amendments effective is published elsewhere in today's **Federal Register**.

II. The June 22, 2001, Final Rule on Required Initial Assessments

Section 22 of the 1937 Act also requires every PHA to conduct and submit to HUD an initial conversion assessment for its developments no later than October 1, 2001 (*see* section 22(b) of the 1937 Act). However, the statute gives HUD the authority to exempt certain classes of developments from this requirement, or streamline the requirements of the required initial assessment. On June 22, 2001 (66 FR 33616), HUD published a final rule

providing regulatory guidance on the preparation and submission of these assessments in a streamlined, simplified form. The June 22, 2001, final rule also took into consideration the public comments received on the proposed initial assessment requirements contained in the July 23, 1999, proposed rule.

For the convenience of readers, the regulatory text of this final rule repeats (but does not modify) the required initial assessment requirements contained in the June 22, 2001, final rule. However, interested readers should refer to the June 22, 2001, final rule for a detailed discussion of these requirements, and of HUD's responses to the public comments on the proposed initial assessment procedures.

III. Cost Methodology for Conversions

This final rule does not address the cost methodology that PHAs must use for the required and voluntary conversion of public housing developments. Both conversion processes require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. This methodology was originally contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies to required conversions). HUD has decided to significantly revise the cost methodology, based on both the public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations.

Accordingly, HUD has decided to issue a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Since the cost methodology necessary to conduct the required cost comparisons has not yet been finalized, HUD is delaying the effective date of this rule for a period of six months (180 days) following publication (as opposed to the customary 30-day period). HUD's goal is to have a final rule establishing the cost methodology in effect by this date. Delaying the effective date of this rule for six months will permit the final rule to take effect as close as possible to the targeted effective date for the cost methodology. While the cost methodology is being completed, PHAs may wish to prepare for voluntary conversions by using the proposed methodology contained in the HUD

proposed rule being published today. However, because final methodology may differ from what is contained in the proposed rule, PHAs should not assume that the proposed cost test will be final with respect to possible required or voluntary conversions.

IV. This Final Rule

This final rule furthers HUD's implementation of the voluntary conversion program authorized by amended section 22 of the 1937 Act. The final rule follows publication of the July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule.

The major differences between this final rule and the July 23, 1999, proposed rule are described below.

A. General Changes

1. Initial assessment requirements not addressed in this final rule. As noted above in section II of this preamble, this final rule does not address the initial assessment requirements contained in the July 23, 1999, proposed rule. These requirements were the subject of a separate June 22, 2001, HUD final rule. Interested readers should refer to that final rule for a detailed discussion of the streamlined initial assessment requirements, and HUD's responses to the public comments received on the initial assessment procedures contained in the proposed rule. For the convenience of readers, the regulatory text of this final rule repeats the initial assessment requirements established by the June 22, 2001, final rule, but does not modify these requirements.

2. Cost methodology subject of separate HUD rulemaking. As noted above in section III of this preamble, this final rule does not address the cost methodology that PHAs must use to compare the cost of public housing with the provision of tenant-based assistance. HUD has decided to significantly revise the cost methodology contained in the July 23, 1999, proposed rule. HUD has, therefore, issued a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons. PHAs may not undertake the cost test necessary for conversions until HUD's publication of the final rule establishing the cost methodology.

3. Reorganization of voluntary conversion requirements. For purposes of clarity, this final rule reorganizes several of the regulatory provisions contained in the proposed rule. For example, the final rule now groups all regulatory provisions concerning similar

subject matter (such as the voluntary conversion process or conversion plans) under undesignated headings that identify the subject of the related requirements. In addition, the final rule replaces the question and answer format used in the proposed rule with standard section headings that identify the subject of the regulatory provisions.

4. Applicability of the Uniform Relocation Act. This final rule adds a new § 972.215, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

B. Changes Regarding Conversion Assessment Requirements

1. Payment standard use for analysis of rental market conditions. This final rule continues to require that a PHA conduct an analysis of rental market conditions as part of a conversion assessment required for approval of voluntary conversion. This analysis must include an assessment of the availability of decent and safe dwelling units rented at or below the payment standard established for Section 8 tenant-based assistance. This final rule clarifies that the payment standard used for this determination is the applicable section 8 payment standard for the jurisdiction or designated part of the FMR area in which the development is located.

2. Tenant-based success rates. This final rule continues to require that, as part of the analysis of rental market conditions, the PHA consider the success rate of using Section 8 tenant-based assistance in the community for the appropriate bedroom size. The final rule, however, clarifies that this determination includes recent success rates for units renting at or below the established payment standard.

3. Characteristics that may affect a family's ability to be housed. This final rule continues to provide that, as part of the required analysis of rental market conditions, a PHA must consider any particular characteristics of the specific residents of the public housing that may affect their ability to be housed. For purposes of clarity, the regulatory text has been revised to provide two examples of such characteristics—large household size and the presence of an elderly or disabled family member.

These examples are meant to illustrate the types of characteristics that a PHA should consider in making this determination. The examples do not preclude a PHA from considering other characteristics that may impact a family's ability to locate housing.

4. Consideration of other substantial impacts. This final rule clarifies that, in addition to the identified potential impacts of conversion, the required impact analysis must also assess "any other substantial impacts on the neighborhood."

5. Additional guidance on what it means to "principally benefit" residents, the PHA, and the community. This final rule clarifies that in determining whether conversion will principally benefit public housing residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing section 8 tenant-based assistance, as well as access to schools, jobs, and transportation. Further, the final rule provides that, in determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

6. Resident participation in development of conversion assessments. This final rule expands the resident participation process for developing a conversion assessment. The conversion assessment consultation process established by this final rule is similar to the consultation process for conversion plans. Specifically, the final rule requires a PHA to hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the development in question). At the meeting, the PHA must explain the voluntary conversion requirements (especially as they apply to residents of affected developments), and provide draft copies of the conversion assessment to the residents. The PHA must also provide the residents with a reasonable period of time to submit comments on the draft conversion assessment. The conversion assessment submitted to HUD must contain a summary of the resident comments, as well as the PHA responses to any significant issues raised by the commenters. (This process may be combined with the process for submitting a conversion plan if the PHA will submit the assessment and plan to HUD together, but otherwise must be

undertaken separately from the process for submitting a conversion plan.)

C. Changes Regarding Conversion Plan Requirements

1. Required consultation with resident council. This final rule clarifies that the PHA must meet to discuss the proposed conversion with any duly elected resident council that covers the development in question.

2. Conversion plan consistency with conversion assessment. This final rule requires that a conversion plan include a description of the plan's consistency with the findings of the conversion assessment.

3. Relocation plan. This final rule provides that the relocation-related requirements of a conversion plan must be contained in a relocation plan, which must include a budget for carrying out relocation activities.

4. Schedule for the provision of moving expenses. This final rule clarifies that a voluntary conversion plan must also include a timetable for the provision of moving services and/or expenses (including a description of the amounts).

5. Consideration of resident comments received on conversion plan. This final rule clarifies that the conversion plan must not only include a summary of the resident comments received during the development of the plan, but must also contain the PHA responses to the comments (including a description of any actions taken by the PHA as a result of the comments).

6. URA notices of displacement. For purposes of clarity, HUD has revised the rule to more closely conform to the notice requirements of the URA and the implementing regulations at 49 CFR part 24. As required by 49 CFR 24.203, if a voluntary conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

The General Information Notice provides families subject to displacement with certain information regarding their rights under URA. Under the URA regulation at 49 CFR 24.203, persons subject to displacement must be provided with the General Information Notice "as soon as feasible." Accordingly, this final rule requires that the PHA provide families with the General Information Notice no later than the date the conversion plan is submitted to HUD.

The Notice of Relocation eligibility advises families subject to displacement that they are eligible for relocation assistance as of a certain date that agencies are free to define (called the "date of initiation of negotiations" in the URA regulations). This final rule provides that, for purposes of voluntary conversions, the "date of initiation of negotiations" shall be the date that HUD approves the conversion plan.

HUD Handbook 1378.0, "Tenant Assistance, Relocation and Real Property Acquisition" (issued on March 28, 1996), provides additional details and helpful information regarding the basic statutory and regulatory requirements that must be followed by an agency that carries out real property acquisition or the displacement of a person for a project or program for which HUD financial assistance is provided, including the notice requirements discussed above. Interested persons may download a copy of Handbook 1378.0 through HUD's Client Information and Policy System (HUDCLIPS) Web Page at <http://www.hudclips.org>.

7. Provision of voucher assistance used for relocation. This final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be issued to the family at least 90 days before conversion.

8. Actual and reasonable relocation expenses. This final rule clarifies that the PHA has the discretion to define whether a relocation cost is actually or reasonably related to the family's relocation and, therefore, reimbursable.

9. Mobility counseling. For purposes of clarity, this final rule specifies that the required PHA counseling to displaced families must include appropriate mobility counseling.

10. Timing of submission of conversion plan. This final rule clarifies that a PHA must prepare a conversion plan, and submit it to HUD, as part of the next PHA Annual Plan, within one year after submitting the full conversion assessment, or as a significant amendment to that Annual Plan. The PHA may also submit the conversion plan in the same Annual Plan as the conversion assessment.

11. HUD review of conversion plans. This final rule clarifies that HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary

response within 90 days following submission of a conversion plan. Lack of a HUD response within this time frame will constitute automatic HUD approval of the conversion plan.

V. Discussion of Public Comments Received on the July 23, 1999, Proposed Rule

The public comment period closed on September 21, 1999. By close of business on that date, HUD had received six public comments. Comments were submitted by a private citizen; a PHA; two of the three main organizations representing PHAs; and two legal aid organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the July 23, 1999, proposed rule and HUD's responses to these comments.

As noted above in this preamble, this final rule does not address the public comments received on the proposed initial assessment requirements (which were addressed as part of HUD's June 22, 2001, final rule on this subject) or on the conversion cost methodology (which is the subject of a separate proposed rule published elsewhere in today's *Federal Register*).

A. General Comments Not Related to a Specific Regulatory Section

Comment: The voluntary conversion program will not work until HUD develops an effective way to enforce Housing Quality Standards (HQS). One commenter wrote that "[s]o long as PHAs are not enforcing HQS, [and] so long as HUD has no capability to monitor the inspection of those properties in Section 8, the [voluntary conversion] process is flawed."

HUD Response. HUD's Section 8 Management Assessment Program (SEMAP) provides for the objective measurement of PHA performance in key areas of the Section 8 tenant-based assistance program (including PHA enforcement of HQS). SEMAP enables HUD to ensure program integrity and accountability by identifying PHA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance.

HUD's final rule for the SEMAP was published on September 10, 1998 (63 FR 48548). Most provisions of the final rule took effect on October 13, 1998. The SEMAP regulations enable HUD to assess PHA enforcement of HQS using specific criteria, and to ensure that appropriate corrective action is taken when a PHA fails to adequately enforce HQS.

Comment: Comments regarding internet cost calculator. The preamble to the proposed rule stated that HUD is considering establishing a web-based cost comparison calculator on HUD's internet homepage to assist PHAs in conducting the cost comparisons required by the proposed rule. (See 64 FR 40241, first column.) Two commenters supported the idea of a web-based cost calculator, writing that it would reduce the workload on PHAs and provide consistency. Another commenter, however, wrote that it is not possible to comment on the web-based calculator until additional details are provided. The commenter also suggested that the methodology used by the web-based calculator should be subject to notice and comment rulemaking procedures.

HUD Response. HUD agrees that an internet cost calculator will reduce PHA administrative burden. HUD also agrees that development of such a calculator will help to ensure the accuracy and consistency of the required cost comparisons. HUD intends to proceed with development of the web-based calculator. Short of a web-based calculator, HUD may post compilation worksheets on its Internet homepage (<http://www.hud.gov>), which will make these calculations easier.

B. Comments Regarding Conversion Assessment Components (§ 972.209 of the Proposed Rule; § 972.218 of This Final Rule)

The proposed rule at § 972.209 described the various components of a conversion assessment (the corresponding provisions of this final rule are located at § 972.218).

Comment: HUD should provide additional guidance regarding the conduct of the conversion assessment. In the preamble to the July 23, 1999, proposed rule, HUD invited public comments on "whether additional guidance should be given regarding how PHAs should conduct the analysis of rental market conditions and the analysis of the impact on the neighborhood and how these analyses relate to the PHA's obligation to affirmatively further fair housing" (see 64 FR 40242, first column).

Two commenters wrote that such guidance would be helpful. One of the commenters wrote that the templates developed for the five-year and annual PHA Plans have been a "helpful addition to the process." The commenter suggested that "[p]erhaps something similar could be developed for [the conversion assessment], and presented for public review and comment." The second commenter

emphasized that HUD should not "prescribe specific requirements for rental market or neighborhood impact analyses beyond those found in the statute."

HUD Response. HUD agrees that additional guidance regarding the conduct of the conversion assessment would be helpful. Where appropriate, HUD has revised the proposed rule to provide additional clarification and guidance on the conversion assessment requirements. For example, HUD has revised the proposed rule to provide examples of the types of characteristics that may impact a family's ability to be housed. The final rule also clarifies that, in considering the success rate of using Section 8 tenant-based assistance, PHAs must consider recent success rates for units renting at or below the established payment standard. HUD may develop further non-regulatory guidance on the voluntary conversion process.

Comment: The impact analysis should include an analysis of the effect of conversion on schools and neighborhood businesses. One commenter made this suggestion.

HUD Response. This final rule requires that the conversion assessment "describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located." Section 972.218(d) provides two examples of potential neighborhood impacts that should be included in the analysis: the impact on the availability of affordable housing in the neighborhood, and the impact on the concentration of poverty in the neighborhood. These examples are meant to illustrate the types of impacts on the neighborhood that must be analyzed by the PHA. The examples do not excuse a PHA from analyzing other likely impacts of the conversion, such as the impact on schools and neighborhood businesses. For purposes of clarity, HUD has revised the proposed rule to provide that the impact analysis must also include "any other substantial impacts on the neighborhood." This change clarifies that a PHA may analyze the types of impacts identified by the commenter, as well as any other impacts on the neighborhood that the PHA determines are appropriate for inclusion in the required analysis.

C. Comments Regarding the Necessary Conditions for HUD Approval of Conversion (§ 972.213 of the Proposed Rule; § 972.224 of This Final Rule)

The proposed rule at § 972.213 provided that a conversion assessment is required for any PHA that seeks approval to convert a property to tenant-

based assistance. The assessment must demonstrate that the conversion of the development will: (1) Not be more expensive than continuing to operate the development (or a portion of it) as public housing; (2) principally benefit the residents of the public housing development (or portion thereof) to be converted, the PHA, and the community; and (3) not adversely affect the availability of affordable housing in the community. (The corresponding provisions of this final rule are located at § 972.224.)

Comment: HUD should provide additional guidance on what it means to "principally benefit" residents of public housing, the PHA, and the community. Two commenters made this recommendation. One of the commenters wrote that, in determining whether conversion will principally benefit residents, HUD should consider such factors as the availability of participating Section 8 landlords, as well as access to schools, jobs, and transportation.

HUD Response. HUD agrees with the commenters and has revised the rule accordingly. Specifically, this final rule clarifies that in determining whether conversion will principally benefit public housing residents, the PHA, and the community, the PHA must consider the availability of landlords providing Section 8 tenant-based assistance and access to schools, jobs, and transportation. Further, the final rule provides that, in determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

D. Comments Regarding the Public and Resident Consultation Process for Developing a Conversion Plan (§ 972.215 of the Proposed Rule; § 972.227 of This Final Rule)

The proposed rule at § 972.215 provided that a conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development. (The corresponding provisions of this final rule are located at § 972.227.)

Comment: Final rule should expand the resident and public participation process. Two commenters recommended the expansion of the public and resident participation standards. One of the commenters objected to the language of the proposed rule, which provided that a PHA could

satisfy the resident consultation requirement by holding a meeting with the residents. The commenter wrote that “[h]olding one meeting to present a plan that has already been developed based on complex calculations and studies * * * is not ‘significant participation’ in the development of the plan.” Both commenters made various specific suggestions for enhancing the consultation process, including:

1. Requiring the PHA to consult with the development’s resident council and the PHA-wide Resident Advisory Board;

2. Requiring that the required meeting with residents take place at least 45 days before the PHA submits the conversion plan to HUD;

3. Requiring that the consultation process include adequate notice to residents and an opportunity for residents to comment. Further, HUD should require that a PHA give due consideration to all comments from residents and the public;

4. Providing resident access to independent technical assistance; and

5. Requiring that any relevant documents be provided to residents at least six months in advance of the public meeting. According to the commenter making this suggestion, this is necessary due to the complexity of the issues related to voluntary conversion.

HUD Response. HUD does not believe that it is necessary to revise the proposed rule to adopt the suggestions made by these commenters. Existing regulatory requirements already ensure meaningful and timely public input in the development of the conversion plans. For example, the conversion plan must be part of the PHA’s Annual Plan. The conversion plans, therefore, are subject to the extensive public participation requirements for the development of the PHA Annual Plans (see 24 CFR part 903). The consultation requirements at § 972.227 supplement the PHA Plan requirements, they do not replace them.

Among other requirements, the PHA Plan regulations require that PHAs establish Resident Advisory Boards to assist and make recommendations in the development of the PHA Annual Plans (see 24 CFR 903.13). PHAs are also required to conduct a public meeting in developing their Annual Plans, and to conduct reasonable outreach activities to encourage broad public participation in the PHA Plans (see 24 CFR 903.17). Considered in their totality, the consultation procedures contained in both the voluntary conversion and PHA Plan regulations require that a PHA undertake good faith efforts to ensure that residents understand and have a

voice in the implementation of voluntary conversions.

For purposes of clarity, HUD has made one change to the proposed consultation requirements. Specifically, the final rule clarifies that the public housing residents with whom the PHA must meet include any duly elected resident council that covers the development in question.

Although HUD has not adopted many of the suggestions made by the commenters, HUD agrees that meaningful public and resident participation is essential to the success of the voluntary conversion process. Accordingly, in addition to requiring consultation with residents during the development of a conversion plan, this final rule also requires that PHAs consult with residents during the preparation of the conversion assessment. The conversion assessment consultation process established by this final rule is similar to the consultation process for conversion plans. The new consultation requirements will help to ensure that PHAs solicit resident input as early as possible in the conversion process.

The conversion assessment procedures at § 972.224 require that a PHA hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the development in question). At the meeting, the PHA must explain the voluntary conversion requirements (especially as they apply to residents of affected developments), and provide draft copies of the conversion assessment to the residents. The PHA must also provide the residents with a reasonable period of time to submit comments on the draft conversion assessment. The conversion assessment submitted to HUD must contain a summary of the resident comments, as well as the PHA responses to any significant issues raised by the commenters.

Comment: The final rule should clarify that a PHA may decide not to proceed with conversion based on comments from residents and the public. Two commenters made this suggestion.

HUD Response. HUD does not believe that the requested change is necessary. This final rule requires that a PHA consider the resident comments in developing the conversion plan. A PHA may decide, based on its consideration of the comments, not to proceed with a proposed conversion. Further, HUD will also consider the public comments in its review of the conversion plan and will not approve a conversion plan unless it

is satisfied that the concerns of residents and the public have been adequately addressed by the PHA.

E. Comments Regarding the Components of a Conversion Plan (§ 972.217 of the Proposed Rule; § 972.230 of This Final Rule)

The proposed rule at § 972.217 described the various elements that must be included in a conversion plan. (The corresponding provisions of this final rule are located at § 972.230.)

Comment: More notice of displacement should be required. The proposed rule would have required that a PHA notify families residing in the development 90 days before displacement. One commenter wrote that the 90-day notice is inadequate. The commenter wrote that, under the Section 8 rental voucher program, families generally have 120 days to locate housing. The commenter also wrote that, for families with school-age children, relocation during the school term will seriously disrupt the children’s education and jeopardize related child-care arrangements.

HUD Response. In accordance with URA, this final rule provides that a family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing, in accordance with the final rule. In addition, the final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be provided to the family at least 90 days before conversion. PHAs should consider all relevant factors that might affect a family’s ability to relocate (such as school age children) in determining the appropriate time frames, and should ensure that families are provided with adequate time to locate new housing.

Comment: Reimbursement of relocation expenses should include security deposits. The proposed rule would have required that a PHA reimburse a family for “actual and reasonable relocation expenses that [the family] incur[s] as a result of the conversion.” One commenter suggested that the final rule explicitly provide for reimbursement of security deposits.

HUD Response. Utility and security deposits are not considered an eligible relocation cost under URA since these deposits are refundable and, therefore, not an expense. PHAs may elect to assist residents to pay any increased or additional deposits that may be required at their replacement unit by advancing funds under a repayment agreement.

HUD, however, does not believe it would be appropriate to identify by regulation all “actual and reasonable” relocation expenses. HUD believes that it is more appropriate to leave the definition of whether a relocation cost is “actual and reasonable” to the individual PHAs, who are more familiar with local circumstances and housing conditions. The final rule, therefore, clarifies that the PHA must reimburse a family for “actual and reasonable relocation expenses, as determined by the PHA” that the family incurs as a result of the conversion.

Comment: Relocation requirements should be split off and set forth in a separate section. One commenter made this recommendation.

HUD Response. HUD does not believe it would be reader-friendly to adopt the commenter’s suggestion. It might be confusing to separate the required elements of the conversion plan into separate regulatory sections.

Accordingly, the final rule continues to set forth all of the necessary components of the conversion plan, including the relocation requirements, in a single section (§ 972.230). The relocation requirements are all contained in paragraph (g) of § 972.230.

Comment: Final rule should reference applicability of URA. One commenter suggested that the final rule should provide that URA applies to families displaced pursuant to a voluntary conversion.

HUD Response. HUD has adopted the commenter’s suggestion. The final rule adds a new § 972.215, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of URA and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply. Further, for purposes of clarity, HUD has revised the proposed rule to more closely conform to the notice requirements of the URA and the implementing regulations. As required by 49 CFR 24.203, if a voluntary conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

F. Comments Regarding HUD Actions With Respect to Conversion Plans (§ 972.223 of the Proposed Rule; § 972.239 of This Final Rule)

The proposed rule at § 972.223 described the standards that HUD will use to review a conversion plan submitted by a PHA, and the grounds for HUD disapproval of a conversion plan. (The corresponding provisions of this final rule are located at § 972.239.)

Comment: HUD grounds for disapproval should be expanded. Two commenters suggested that the final rule should provide additional reasons for HUD to disapprove a proposed voluntary conversion. Specifically, the commenters suggested that a conversion plan not be approved:

1. Unless converted housing is replaced on a one-for-one basis.
2. Unless the PHA has financing commitments in place for redevelopment of the housing to be converted.
3. If conversion will result in reduction in fair housing choice.
4. Unless the conversion plan is consistent with the Consolidated Plan.

HUD Response. HUD does not believe it is necessary to revise the rule to adopt the suggestions made by these commenters. The regulatory provisions regarding HUD disapproval of conversion plans are identical to the statutory language of section 22 of the 1937 Act. Section 22 provides that “[t]he Secretary shall disapprove a conversion plan only if (1) the plan is plainly inconsistent with the conversion assessment * * *; (2) there is reliable information and data available to the Secretary that contradicts the conversion assessment; or (3) the plan otherwise fails to meet the requirements of this section.”

HUD believes that the statutory language is sufficiently flexible to permit HUD to address the concerns raised by the commenters. The PHA is already required to consider most of the issues raised by the commenter (such as the impact of the conversion on fair housing choice and the availability of replacement housing) as part of the conversion assessment process. The broad disapproval authority granted to HUD by section 22 will allow it to disapprove a conversion plan that fails to adequately address these concerns when they rise to the level contemplated by the statute.

G. Comments Regarding the Timing of Voluntary Conversion (§ 972.225 of the Proposed Rule; § 972.212 of This Final Rule)

The proposed rule at § 972.225 provided that a PHA may proceed to

convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. Once a conversion plan is approved, tenants may be relocated using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance, and the PHA will be given a priority for receiving tenant-based assistance. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD might require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

Comment: HUD should not require that funding for the first year of tenant-based assistance be provided from the Capital or Operating Funds. Three commenters objected to this provision of the proposed rule. The commenters agreed that “[t]he effect of siphoning off and further reducing public housing funds for tenant-based assistance will be the continued deterioration of public housing.” “[O]perating and capital funds are appropriated to ensure the preservation of public housing as an affordable housing resource and, as such, any funds attributable to developments identified for conversion should be re-invested in the public housing stock.” One of the commenters wrote that this provision contradicts the statutory language of section 533 of QHWRA, which provides that “the funds used by the [PHA] to provide tenant-based assistance shall be added to the annual contributions contract administered by the [PHA].”

HUD Response. HUD has not adopted the change requested by the commenter. The final rule does not mandate that the initial year of tenant-based assistance be provided from the Capital and Operating Funds. Rather, the final rule, as did the proposed rule before it, merely provides for this possibility. HUD continues to believe that the flexibility provided by this provision is necessary to ensure that adequate funding is available for voluntary conversions. HUD disagrees with the commenter who wrote that this provision contradicts the language of section 533 of QHWRA. The statute provides that the necessary funds will be added to the annual contributions contract only “[t]o the extent approved by the Secretary.” Nothing in the statutory language prohibits the use of the Operating and Capital Funds for such purposes.

Comment: HUD should provide additional guidance regarding post-conversion funding. One commenter

wrote that it would be helpful for HUD to clarify the timing of the phased process for substituting assistance and, particularly, whether local funding would be applied before or after deducting subsidy for the units being converted.

HUD Response. Converted public housing would be phased out using currently applicable procedures. Subject to appropriations, new Section 8 funding would be committed and provided to PHAs for the provision of tenant-based voucher assistance.

H. Comments on Issues Highlighted for Public Comment

Although HUD welcomed public comment on all aspects of the July 23, 1999, proposed rule, the preamble to the proposed rule specifically invited comments on the following issues (see 64 FR 40242, beginning on the middle column):

1. Whether the voluntary conversion process should be used to promote deconcentration; and
2. Whether a description should be required, as part of a full conversion assessment, of the proposed conversion's impact on racial and ethnic minorities and persons with disabilities.

In addition, the preamble solicited comments on a third issue regarding the cost methodology used for conversions. Specifically, HUD solicited comments on whether it is more appropriate to use a housing construction cost component of Total Development Cost (TDC) for purposes of calculating accrual. As noted above, HUD is issuing a separate proposed rule, published elsewhere in today's **Federal Register**, regarding the cost methodology. The proposed rule addresses the public comments received on whether PHA capital costs should be included as part of the cost-comparison between public housing and vouchers.

1. Comments Regarding Deconcentration

Comment: Voluntary conversion process should not be used to promote deconcentration. Two commenters opposed the use of the voluntary conversion process to promote deconcentration. The commenters wrote that promoting deconcentration is not authorized by section 533 of QHWR and that "conversion to Section 8 vouchers decreases the amount of needed hard units for low-income tenants." One of the commenters also wrote that "PHAs across the country have successfully used the mixed finance provisions to achieve income mix and improve public housing sites." This commenter believes that use of the voluntary conversion process to achieve

the same goals "will only complicate and confuse the HUD approval process."

HUD Response. After careful consideration, HUD has decided not to revise the proposed rule to specifically address the use of voluntary conversions to promote deconcentration. The rule provides PHAs with the flexibility to use the conversion process as a tool in their deconcentration efforts.

Comment: Final rule should establish safeguards if HUD decides to use conversion to promote deconcentration. One commenter suggested that if HUD decides to use conversion to promote deconcentration, it should require that, "at the very least," the conversion plan specify how deconcentration will occur. Further, the commenter wrote that the conversion plan should include a "realistic mobility project, adequate funding for the project, and monitoring to make sure that the promised deconcentration actually occurs." The commenter suggested that HUD impose appropriate sanctions if the promised deconcentration does not occur, including the "withdrawal of the approval for voluntary conversion, or a cessation of the conversion process until there is a substantial measurable progress on deconcentration."

HUD Response. HUD has not adopted the suggestions made by the commenter. As noted in the response to the previous comments, HUD has not revised the rule to specifically address the use of the voluntary conversion process to promote deconcentration.

2. Comments Regarding Fair Housing Assessment

Two commenters opposed the preparation of a fair housing impact assessment. One of the commenters noted that no such analysis is required for mandatory conversions under section 537 of QHWR. The commenter also wrote that much of the information generated by such an analysis would already have been captured in the neighborhood impact portion of the conversion assessment. The second commenter wrote that the "statutory requirements for public notice and consultation, along with existing housing discrimination law, sufficiently protects vulnerable groups."

Two other commenters, however, recommended that the final rule should require the preparation of a fair housing impact analysis. The commenters wrote that HUD and PHAs have an obligation to avoid discriminatory impacts and to affirmatively further fair housing. One commenter suggested that the fair housing assessment and supporting data

should be made available to the residents and the public for comment.

The commenters suggested that the fair housing analysis should:

1. Consider the impact of conversion on each protected class: racial and ethnic minorities, persons with disabilities, and families with children;
2. Consider the impact not only on current residents, but also on persons likely to apply for housing;
3. Determine whether the proposed conversion will increase fair housing choice for each protected class, or perpetuate segregation;
4. Determine whether the proposed conversion will decrease fair housing choice (according to the commenter this would generally be true if the overall amount of assisted housing is reduced or if public housing units located outside high poverty areas with concentrations of minorities are converted);
5. Analyze the rate at which minority families and other protected groups are able to find housing under the Section 8 voucher program in areas that are racially integrated and have low poverty rates;
6. Analyze whether all families in housing proposed to be converted will receive housing assistance and be able to remain in the area if they choose;
7. Analyze the need and cost for higher payment standards in non-poverty areas; and
8. Analyze the availability of participating Section 8 landlords. The commenter suggested that a PHA should be required to provide an advance list of landlords willing to participate.

HUD Response. After careful consideration, HUD has determined that the proposed rule adequately addresses fair housing considerations, and that a regulatory change is unnecessary. As part of their conversion assessments, PHAs are required to evaluate the rental market conditions for residents of the converted development, including "any particular characteristics of the specific residents of the public housing which may affect their ability to be housed." This assessment should take into consideration the rental market conditions for ethnic and racial minorities and for persons with disabilities. PHAs are also required to analyze the impact of conversion on the neighborhood, which should include the potential impacts relevant to fair housing.

Further, other regulatory requirements help to ensure that PHAs consider the fair housing implications of their conversion activities. As noted above, the conversion plan must be part of the PHA's Annual Plan. HUD's PHA Plan

regulations require that a PHA certify that it will carry out its Annual Plan and 5-Year Plan in conformity with applicable statutory fair housing and nondiscrimination requirements, and must affirmatively further fair housing. This, of course, includes any voluntary conversion activities. As noted above, HUD has also added language to the final rule further emphasizing the need for adequate mobility counseling.

VI. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 972.218 and 972.230 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0234. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The entities that are subject to this rule are public housing agencies that administer public housing. Under the definition of “Small governmental jurisdiction” in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, this final rule establishes policies and procedures governing voluntary conversions of public housing developments to tenant-based assistance. Accordingly, to the extent that the rule imposes any economic costs on PHAs, it does so as a result of actions undertaken voluntarily by the PHAs. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24

CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled “Regulatory Planning and Review.” OMB determined that this rule is a “significant regulatory action” as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department’s Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

List of Subjects in 24 CFR Part 972

Grant programs—housing and community development, Low and moderate income housing, Public housing.

- For the reasons discussed in the preamble, HUD amends title 24 of the Code of Federal Regulations, chapter IX, part 972 as follows:

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

- 1. The authority citation for part 972 continues to read as follows:

Authority: 42 U.S.C. 1437t, 1437z, and 3535(d).

- 2. Revise subpart B to read as follows:

Subpart B—Voluntary Conversion of Public Housing Developments

Purpose; Definition of Conversion

Sec.

972.200 Purpose.

972.203 Definition of “conversion.”

Required Initial Assessments

972.206 Required initial assessments.

Voluntary Conversion Procedure

972.209 Procedure for voluntary conversion of public housing developments to tenant-based assistance.

972.212 Timing of voluntary conversion.

972.215 Applicability of Uniform Relocation Act.

Conversion Assessments

972.218 Conversion assessment components.

972.221 Timing of submission of conversion assessments to HUD.

972.224 Necessary conditions for HUD approval of conversion.

Conversion Plans

972.227 Public and resident consultation process for developing a conversion plan.

972.230 Conversion plan components.

972.233 Timing of submission of conversion plans to HUD.

972.236 HUD process for approving a conversion plan.

972.239 HUD actions with respect to a conversion plan.

Subpart B—Voluntary Conversion of Public Housing Developments

Purpose; Definition of Conversion

§ 972.200 Purpose.

This subpart implements section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t). The purposes of this subpart are to:

- (a) Require PHAs to perform an assessment which considers developments for which conversion of public housing may be appropriate; and

(b) Provide a basis for a PHA to take action for conversion on a voluntary basis.

§ 972.203 Definition of “conversion.”

For purposes of this subpart, the term “conversion” means the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the public housing that is being removed. The term “conversion,” as used in this subpart, does not necessarily mean the physical removal of the public housing development from the site.

Required Initial Assessments

§ 972.206 Required initial assessments.

(a) *General.* A PHA must conduct a required initial assessment (which consists of the certification described in paragraph (b) of this section), in accordance with this section, once for each of its developments, unless:

(1) The development is subject to required conversion under 24 CFR part 971;

(2) The development is the subject of an application for demolition or disposition that has not been disapproved by HUD;

(3) A HOPE VI revitalization grant has been awarded for the development; or

(4) The development is designated for occupancy by the elderly and/or persons with disabilities (*i.e.*, is not a general occupancy development).

(b) *Certification procedure.* For each development, the PHA shall certify that it has:

(1) Reviewed the development’s operation as public housing;

(2) Considered the implications of converting the public housing to tenant-based assistance; and

(3) Concluded that conversion of the development may be:

(i) Appropriate because removal of the development would meet the necessary conditions for voluntary conversion described in § 972.224; or

(ii) Inappropriate because removal of the development would not meet the necessary conditions for voluntary conversion described § 972.224.

(c) *Documentation.* A PHA must maintain documentation of the reasoning with respect to each required initial assessment.

(d) *Timing of submission.* Consistent with statutory submission requirements, the results of each required initial assessment (consisting of the certification described in paragraph (b) of this section) must be submitted to HUD as part of the next PHA Annual Plan after its completion.

Voluntary Conversion Procedure

§ 972.209 Procedure for voluntary conversion of public housing developments to tenant-based assistance.

A PHA that wishes to convert a public housing development to tenant-based assistance must comply with the following process:

(a) The PHA must perform a conversion assessment, in accordance with §§ 972.218–972.224 and submit it to HUD as part of the next PHA Annual Plan submission.

(b) The PHA must prepare a conversion plan, in accordance with § 972.227–972.233, and submit it to HUD, as part of its PHA Annual Plan, within one year after submitting the conversion assessment. The PHA may submit the conversion plan in the same Annual Plan as the conversion assessment.

(c) The PHA may proceed to convert the development if HUD approves the conversion plan.

§ 972.212 Timing of voluntary conversion.

(a) A PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. This approval will be separate from the approval that the PHA receives for its PHA Annual Plan. A PHA may apply for tenant-based assistance in accordance with Section 8 program requirements and will be given priority for receiving tenant-based assistance to replace the public housing units.

(b) A PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a Responsible Entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, the submitted conversion plan will be considered the equivalent of a formal request to remove dwelling units from the PHA’s inventory and Annual Contributions Contract (ACC). Units that

are vacant or are vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title, and will also be provided the phase down of subsidy pursuant to § 990.114 of this title.

(d) HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.215 Applicability of the Uniform Relocation Act.

To the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted under this subpart, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

Conversion Assessments

§ 972.218 Conversion assessment components.

The conversion assessment contains five elements, as described below:

(a) *Cost analysis.* A PHA must conduct a cost analysis comparing the cost of providing Section 8 tenant-based assistance with the cost of continuing to operate the development as public housing for the remainder of its useful life. The cost methodology necessary to conduct the cost comparisons for voluntary conversions has not yet been finalized. PHAs may not undertake conversions under this subpart until the effective date of the cost methodology, which will be announced in the **Federal Register**. Once effective, the cost methodology will be codified as an appendix to this part.

(b) *Analysis of the market value.* (1) A PHA must have an independent appraisal conducted to compare the market value of the development before and after rehabilitation. In both cases, the market value must be based on the use of the development as public housing.

(2) In addition, the appraisal must compare:

(i) The market value of the development before rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion; with

(ii) The market value of the development after rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion.

(3) A copy of the appraisal findings and the analysis of market value of the development in the conversion assessment must be provided in the conversion assessment.

(c) *Analysis of rental market conditions.* (1) A PHA must conduct an analysis of the likely success of using tenant-based assistance for the residents of the public housing development. This analysis must include an assessment of the availability of decent, safe, and sanitary dwelling units rented at or below the applicable Section 8 payment standard established for the jurisdiction or designated part of the FMR area in which the development is located.

(2) In conducting this assessment, a PHA must take into account:

(i) Its overall use of rental certificates or vouchers under lease and the success rates of using Section 8 tenant-based assistance in the community for the appropriate bedroom sizes, including recent success rates for units renting at or below the established payment standard; and

(ii) Any particular characteristics of the specific residents of the public housing which may affect their ability to be housed (such as large household size or the presence of an elderly or disabled family member).

(d) *Impact analysis.* A PHA must describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located. This must include:

(1) The impact on the availability of affordable housing in the neighborhood;

(2) The impact on the concentration of poverty in the neighborhood; and

(3) Other substantial impacts on the neighborhood.

(e) *Conversion implementation.* If a PHA intends to convert the development (or a portion of it) to tenant-based assistance, the conversion assessment must include a description of any actions the PHA plans to take in converting the development. This must include a general description of the planned future uses of the development, and the means and timetable for accomplishing such uses.

§ 972.221 Timing of submission of conversion assessments to HUD.

(a) *Submission with PHA Plan.* A PHA that wishes to convert a public housing development to tenant-based assistance must submit a conversion assessment to HUD with its next PHA Annual Plan.

(b) *Updated conversion assessment.* Where a PHA proposes to convert a development to tenant-based assistance, it must submit an updated conversion assessment if the conversion assessment otherwise would be more than one year

older than the conversion plan to be submitted to HUD. To update a conversion assessment, a PHA must ensure that the analysis of rental market conditions is based on the most recently available data, and must include any data that have changed since the initial conversion assessment. A PHA may submit the initial cost analysis and comparison of the market value of the public housing before and after rehabilitation and/or conversion if there is no reason to believe that such information has changed significantly.

§ 972.224 Necessary conditions for HUD approval of conversion.

(a) *Conditions.* In order to convert a public housing development, the PHA must conduct a conversion assessment that demonstrates that the conversion of the development:

(1) Will not be more expensive than continuing to operate the development (or portion of it) as public housing;

(2) Will principally benefit the residents of the public housing development (or portion thereof) to be converted, the PHA, and the community; and

(3) Will not adversely affect the availability of affordable housing in the community.

(b) *Evidence.* (1) *Relative expense.* The relative expense of continuing operation as public housing or conversion to tenant-based assistance may be demonstrated by the cost analysis and market value analysis.

(2) *Benefit to residents, PHA, and the community.* (i) The benefit to residents, the PHA, and the community may be demonstrated in the rental market analysis, the analysis of the impact on the neighborhood, the market value analysis, and the proposed future use of the development. In determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

(ii) In making the determination of whether a conversion would principally benefit residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing tenant-based assistance, as well as access to schools, jobs, and transportation.

(iii) To determine the benefit to residents, the PHA must hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the

development in question). At the meeting, the PHA must:

(A) Explain the requirements of section 22 of the United States Housing Act of 1937 and these regulations, especially as they apply to residents of affected developments;

(B) Provide draft copies of the conversion assessment to the residents; and

(C) Provide the residents with a reasonable period of time to submit comments on the draft conversion assessment.

(iv) The conversion assessment submitted to HUD must contain a summary of the resident comments, and the PHA responses to any significant issues raised by the commenters.

(3) *Impact on affordable housing.* The impact on affordable housing may be demonstrated in the rental market analysis and the analysis of the impact of conversion on the neighborhood.

Conversion Plans

§ 972.227 Public and resident consultation process for developing a conversion plan.

(a) A conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development.

(b) The requirement for consultation with public officials may be satisfied by obtaining a certification from the appropriate state or local officials that the conversion plan is consistent with that jurisdiction's Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for significant participation by residents of the development, in addition to the public participation requirements for the PHA Annual Plan, a PHA must:

(1) Hold at least one meeting with the residents of the affected sites (including the duly elected Resident Council, if any, that covers the development in question) at which the PHA must:

(i) Explain the requirements of section 22 of the United States Housing Act of 1937 and these regulations, especially as they apply to residents of affected developments; and

(ii) Provide draft copies of the conversion plan to them.

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments (as well as the PHA responses to the significant issues raised by the commenters) for HUD, and consider these comments in developing the final conversion plan.

§ 972.230 Conversion plan components.

A conversion plan must:

(a) Describe the conversion and future use or disposition of the public housing development. If the future use of the development is demolition or disposition, the PHA is not required to submit a demolition or disposition application, so long as the PHA submits, and HUD approves, a conversion plan that includes a description of the future uses of the development.

(b) Include an impact analysis of the conversion on the affected community. This may include the description that is required as part of the conversion assessment.

(c) Include a description of how the conversion plan is consistent with the findings of the conversion assessment undertaken in accordance with § 972.218.

(d) Include a summary of the resident comments received when developing the conversion plan, and the PHA responses to the significant issues raised by the commenters (including a description of any actions taken by the PHA as a result of the comments).

(e) Confirm that any proceeds received from the conversion are subject to the limitations under section 18(a)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437p(a)(5)) applicable to proceeds resulting from demolition or disposition.

(f) Summarize why the conversion assessment for the public housing project supports the three conditions necessary for conversion described in § 972.224.

(g) Include a relocation plan that incorporates all of the information identified in paragraphs (g)(1) through (g)(4) of this section. In addition, if the required conversion is subject to the URA, the relocation plan must also contain the information identified in paragraph (g)(5) of this section. The relocation plan must incorporate the following:

(1) The number of households to be relocated, by bedroom size, by the number of accessible units.

(2) The relocation resources that will be necessary, including a request for any necessary Section 8 funding and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing and budget for carrying out relocation activities.

(3) A schedule for relocation and removal of units from the public housing inventory (including the schedule for providing actual and reasonable relocation expenses, as determined by the PHA, for families displaced by the conversion).

(4) Provide for issuance of a written notice to families residing in the development in accordance with the following requirements:

(i) *Timing of notice.* If the voluntary conversion is not subject to the URA, the notice shall be provided to families at least 90 days before displacement. If the voluntary conversion is subject to the URA the written notice shall be provided to families no later than the date the conversion plan is submitted to HUD. For purposes of a voluntary conversion subject to the URA, this written notice shall constitute the General Information Notice (GIN) required by the URA.

(ii) *Contents of notice.* The written notice shall include all of the following:

(A) The development will no longer be used as public housing and that the family may be displaced as a result of the conversion;

(B) The family will be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA (if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon relocation of the family into such housing);

(C) Any necessary counseling with respect to the relocation will be provided, including any appropriate mobility counseling (the PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding);

(D) The family will be relocated to other decent, safe, sanitary, and affordable housing that is, to the maximum extent possible, housing of their choice;

(E) If the development is used as housing after conversion, the PHA must ensure that each resident may choose to remain in the housing, using tenant-based assistance towards rent;

(F) Where Section 8 voucher assistance is being used for relocation, the family will be provided with the vouchers at least 90 days before displacement;

(5) *Additional information required for conversions subject to the URA.* If the voluntary conversion is subject to the URA, the written notice described in paragraph (g)(4) must also provide that:

(i) The family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing as provided in paragraph (g)(4)(ii)(B) of this section;

(ii) Any person who is an alien not lawfully present in the United States is ineligible for relocation payments or assistance under the URA, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as provided in the URA regulations at 49 CFR 24.208.

(iii) The family has a right to appeal the PHA's determination as to the family's application for relocation assistance for which the family may be eligible under this subpart and URA.

(iv) Families residing in the development will be provided with the URA Notice of Relocation Eligibility or Notice of Non-displacement (as applicable) as of the date HUD approves the conversion plan (for purposes of this subpart, the date of HUD's approval of the conversion plan shall be the "date of initiation of negotiations" as that term is used in URA and the implementing regulations at 49 CFR part 24).

(v) Any family that moves into the development after submission of the conversion plan to HUD will also be eligible for relocation assistance, unless the PHA issues a written move-in notice to the family prior to leasing and occupancy of the unit advising the family of the development's possible conversion, the impact of the conversion on the family, and that the family will not be eligible for relocation assistance.

§ 972.233 Timing of submission of conversion plans to HUD.

A PHA that wishes to convert a public housing project to tenant-based assistance must submit a conversion plan to HUD. A PHA must prepare a conversion plan, in accordance with § 972.230, and submit it to HUD, as part of the next PHA Annual Plan within one year after submitting the full conversion assessment, or as a significant amendment to that Annual Plan. The PHA may also submit the conversion plan in the same Annual Plan as the conversion assessment.

§ 972.236 HUD process for approving a conversion plan.

Although a PHA will submit its conversion plan to HUD as part of the PHA Annual Plan, the conversion plan will be treated separately for purposes of HUD approval. A PHA needs a separate written approval from HUD in order to proceed with conversion. HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's

initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan. A lack of a HUD response within this time frame will constitute automatic HUD approval of the conversion plan.

§ 972.239 HUD actions with respect to a conversion plan.

(a) When a PHA submits a conversion plan to HUD, HUD will review it to determine whether:

(1) The conversion plan is complete and includes all of the information required under § 972.230; and

(2) The conversion plan is consistent with the conversion assessment the PHA submitted.

(b) HUD will disapprove a conversion plan only if HUD determines that:

(1) The conversion plan is plainly inconsistent with the conversion assessment;

(2) There is reliable information and data available to the Secretary that

contradicts the conversion assessment; or

(3) The conversion plan is incomplete or otherwise fails to meet the requirements under § 972.230.

Dated: August 11, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03-23027 Filed 9-16-03; 8:45 am]

BILLING CODE 3210-33-P