



Federal Register

**Tuesday,
October 24, 2006**

Part II

**Department of
Housing and Urban
Development**

24 CFR Part 970

**Demolition or Disposition of Public
Housing Projects; Final Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 970

[Docket No. FR-4598-F-02]

RIN 2577-AC20

**Demolition or Disposition of Public
Housing Projects**

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

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations governing demolition or disposition of public housing projects. This rule establishes the general and specific requirements for HUD approval of demolition or disposition applications, relocation of residents, resident participation in the form of consultation and opportunity to purchase a public housing project, the replacement of units, and a new authority for a public housing agency (PHA) to demolish a small number of its units without a formal application under certain circumstances, referred to as "*de minimis*" demolition. This final rule follows a December 15, 2004, proposed rule and makes several changes in response to public comment.

DATES: *Effective Date:* November 24, 2006.

FOR FURTHER INFORMATION CONTACT:

Ainars Rodins, Director, Public and Indian Housing Special Application Center, Department of Housing and Urban Development, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Room 2401, Chicago, IL 60604-3507; telephone: (312) 353-6236 (this is not a toll-free number). Persons with hearing or speech impairments may access that number toll-free through TTY by calling the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2004, HUD published a proposed rule (69 FR 75188) entitled "Demolition or Disposition of Public Housing Projects." This rule proposed to implement revisions to section 18 of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437p) (section 18) made by the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, approved October 21, 1998) (QHWRA). Section 18 generally pertains to the demolition and disposition of public housing projects, including application and other requirements. The

main features of the QHWRA revisions to section 18 are:

- A change in the burden of proof required for HUD approval of an application for demolition or disposition. Rather than HUD having to independently make certain findings, as long as the PHA certifies truthfully to the relevant factors, HUD will approve the application.
- The resident opportunity to purchase a project, which, by regulation, applied in the case of both demolition and disposition, is now by statute available only for proposed dispositions of public housing projects.
- The former requirement for one-for-one replacement of demolished units was eliminated.
- Former section 18(d) of the 1937 Act was removed. That section provided that a PHA could not "take any action" to demolish a public housing project, or portion of a project, without HUD approval. Similar language in 24 CFR 970.7(a) and 970.25(a) is designed to make certain that HUD can track units being phased out for funding purposes. That language is not intended to create any private right of action.
- A small, "*de minimis*" exception to the requirements of section 18 is made that allows the lesser of 5 percent of a PHA's public housing units or five units to be demolished, if the space will be used for meeting service or other needs of residents or if the units are beyond repair.
- Consolidation of occupancy in buildings for the purpose of improving living conditions or providing more efficient services to residents is allowed.
- If replacement units are put back on the site of a demolished project, they must be significantly fewer in number than the number of units demolished.
- The Uniform Relocation Act (42 U.S.C. 4601 *et seq.*) is statutorily not applicable to residents of projects to be demolished or disposed, but there are specific notice and relocation requirements for those residents.

There is a more detailed description of the statutory changes in the preamble to the proposed rule at 69 FR 75188.

II. This Final Rule

This final rule follows publication of the December 15, 2004, proposed rule and takes into consideration all comments received. Section III of this preamble summarizes the issues raised by the public commenters and provides HUD's responses.

In consideration of the public comments, and in order to clarify certain legal points, HUD has made several changes at the final rule stage.

- The exception in § 970.3(b)(5) for common areas and unoccupied units for use in Family Self-Sufficiency (FSS) programs has been expanded to include HUD-approved economic self-sufficiency services and activities to promote employment of public housing residents.

- In § 970.3(b)(11), the explanation of the acronym "DOFA" (date of full availability) has been eliminated because the correct explanation is now given at § 970.3(b)(2).

- In § 970.3(b)(12), a clarification is made that the regulation does not apply to disposition of property for mixed-finance development under 24 CFR part 941, subpart F.

- In § 970.7(a)(6), the rule clarifies that a relocation plan must include reasonable accommodations for persons who require such accommodations under law. This addition simply clarifies existing law.

- The requirement in proposed § 970.7(a)(9), that a PHA provide the estimated balance of project debt with a disposition application, has been eliminated because HUD has independent access to that information.

- The proposed 2-year time limitation on completion of demolition or disposition in § 970.7(b)(1) has been removed.

- The rule clarifies references to the HOPE VI program and mandatory conversion in § 970.9(b) relating to exceptions from the resident opportunity to purchase, and, in § 970.9(c), includes a clarifying reference to the definition of "established eligible organizations."

- In § 970.11, which contains the procedures for sales offers to resident organizations, the final rule gives the PHAs 3 business days to provide information in response to the residents' initial expression of interest, rather than the proposed same-day response (see § 970.11(d)(6)).

- In § 970.13, HUD has incorporated more explanation about environmental review procedures and policies into the environmental review provisions.

- In § 970.15, which relates to criteria for HUD approval of demolition requests, the use of housing construction cost (HCC) in the test for obsolescence is replaced with a percentage of total development cost (TDC).

- In § 970.21(c)(2), this rule clarifies that the use of Urban Development Action Grant (UDAG) funds under 42 U.S.C. 5318 and HOME Investment Partnership Act (HOME) funds under 42 U.S.C. 12701 *et seq.*, as well as Community Development Block Grant (CDBG) funds under 42 U.S.C. 5301 *et*

seq., can trigger relocation obligations under section 104(d) of the Housing and Community Development Act of 1974.

- In § 970.27, relating to the requirements for *de minimis* demolition, the definition of “beyond repair” is removed, and a clarification is added to the effect that PHAs must still comply with applicable laws outside of the 1937 Act, including environmental authorities and civil rights requirements.

- The phrase “notwithstanding any other provision of law” is added to § 970.31, which contains the requirement that any on-site replacement units be significantly fewer in number than the number of units demolished.

III. Discussion of the Public Comment on the December 15, 2004, Proposed Rule

The public comment period for the proposed rule closed on February 14, 2005. Fourteen commenters submitted comments. Commenters included industry trade associations, PHAs, and individuals. A summary of the issues raised by the commenters follows.

A number of commenters stated that they generally support the rule. A commenter stated that it supports the “streamlined changes” to the regulations. Another commenter favorably cited the provision allowing PHAs to rescind requests for demolition or disposition if conditions have changed (§ 970.7(b)(2)), and that an offer only has to be made to resident organizations in the case of disposition (§ 970.11). Another commenter stated that the rule is now better organized and easier to read.

One commenter stated support for the following specific provisions: §§ 970.7, 970.15, and 970.17, which provide for HUD deference to a PHA’s “unique knowledge of local conditions,” and §§ 970.15 and 970.17, permitting a PHA to certify that portions of its housing stock are no longer viable for public housing “according to more realistic standards.” The commenter stated that these provisions will give PHAs greater flexibility to develop alternative housing programs and preserve its other existing housing stock.

This commenter also stated support for § 970.19 providing for a waiver of the duty to retire outstanding obligations. Sections 970.9 and 970.11 would provide for “reasonable prior notice to residents.” While PHAs would “no longer be obligated to wait for a period of time for the resident to organize” in the case of a disposition, they would only be obligated to make an offer to existing resident organizations.

Proposed § 970.25, allowing the PHA to consolidate occupancies, will provide “greater flexibility in allocating scarce resources.” Section 970.27, providing for a *de minimis* exception to demolition requirements, will “grant the PHA relief from the substantial administrative burdens” involved in making small changes to its public housing stock.

A. General Comments

Comment: One commenter requested an extension of time to file public comments, stating that the rule could have a large impact and that time for further research was necessary.

Response: HUD provided 60 days for public comment. This time span is in accordance with HUD’s policy as stated in 24 CFR 10.1, and experience has shown that this period is generally sufficient time for the public to comment on HUD’s proposed rules, and HUD determined that this was the case for this rule.

Comment: HUD should continue to refine and streamline this rule for greater flexibility. Another commenter stated that HUD should remove “all unnecessary and redundant regulations to streamline the demolition and disposition process.”

Response: HUD continually seeks to improve its regulations.

B. Comments on Specific Provisions

1. Demolition or Disposition for Mixed-Finance Projects

Comment: Demolition or disposition related to mixed-finance development should be exempt from the requirements of this rule, or such disposition should be exempt. Some commenters raising this issue stated that because mixed-finance projects are already heavily regulated and time-consuming, they should not have to undergo a separate complete approval process under this rule. These and other commenters stated that there is already substantial overlap between the mixed-finance approval process and the approval process under this rule, and to the extent that there are some different requirements (such as environmental review and offer of sale to residents), the entire approval process could be done as part of mixed-finance approval, or at least PHAs should be given that option.

Response: The rule does exempt public housing developments that are conveyed by a PHA prior to the date of full availability (DOFA) to enable an owner entity to develop the property using the mixed-finance development method (see 24 CFR 970.3(b)(11)). In addition, HUD agrees with the

commenters that section 18 of the 1937 Act and this regulation do not apply to public housing property to be used for mixed-finance developments. This final rule revises 24 CFR 970.3(b)(12) to clarify this point.

Comment: Section 970.2(a)(11) of the currently codified regulations should be read to exempt mixed-finance projects from a separate disposition review process, although HUD (according to the commenter, incorrectly) does not read the section this way. Some other commenters also cited proposed § 970.3(b)(11) as well as § 970.3(b)(12) for the same proposition. Other commenters cited proposed § 970.3(b)(12) for the proposition that mixed-finance public housing does not require a demolition/disposition application, and asked that HUD’s Mixed-Finance Guidebook be amended accordingly.

Response: See the response to the preceding comment. Additionally, all guidance and application materials will be revised accordingly.

Comment: The rule should contain a clear statement that mixed-finance projects are exempt. HUD should “clarify” its regulations on this issue, because working on complex issues with multiple departments at HUD may cause delays that increase development costs and that are detrimental to residents. Sections 970.3(b)(11) and (12) should be revised to exempt “any public housing development or land on which a public housing development formerly stood that is conveyed by a PHA to an owner entity pursuant to an approved proposal under 24 CFR part 941, subpart F.” If HUD chooses not to exempt mixed-finance projects in their entirety, HUD should add a new § 970.3(c) as follows:

Land or public housing disposed of prior to the start of construction in or due to mixed-finance development is not exempt under this part. Although development under 24 CFR part 941, subpart F is not exempt from this part 970, for such development under part 941, subpart F, HUD will collect all information required by part 970 during the approval process described at 24 CFR part 941, subpart F.

Response: The rule does exempt public housing developments that are conveyed by a PHA prior to the date of full availability (DOFA) to enable an owner entity to develop the property using the mixed-finance development method (see 24 CFR 970.3(b)(11)). HUD believes that §§ 970.3(b)(11) and (12) resolve the issues raised by these comments.

Comment: Independent appraisals should not be required where a property is undergoing disposition for a nominal

price or for use in a mixed-finance project, because most such dispositions are for a nominal or *de minimis* price. PHAs should not have to obtain an independent appraisal for dispositions at less than fair market value (FMV). Section 970.7(a)(10) should be revised to read:

In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal, unless HUD determines that another method of valuation is sufficient, as described in § 970.10(c).

Three commenters stated that § 970.19(c)(2) should be revised to read:

Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data, including, but not limited to, transfers for less than fair market value.

Response: HUD reserves the right to request a determination of fair market value (FMV) of the property. Assessing the market value of a property is a common business practice and assists in evaluating any gain or loss. HUD only requires an appraisal if the property is advertised for bid and, even then, not in all cases. HUD recognizes that in some cases, a full appraisal is not necessary and has accepted tax assessors' opinions for dollar deals, negotiated sales, and leases in order to meet the appraisal requirement. Appraisal would not be required for disposition based on commensurate public benefit. Even in the case of public sale, appraisal is not required under some circumstances as indicated in § 970.19 of the proposed rule. Language in the proposed rule stated that an independent appraisal is required unless "HUD determines that another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified." (See proposed § 970.7(a)(10), final § 970.7(a)(9).) Therefore, HUD has not adopted suggestions from commenters regarding proposed § 970.7(a)(10), since the result is the same under both the proposed rule and the commenter's suggested language.

2. De Minimis Demolition, Proposed § 970.27

Comment: Section 970.27(c)(2) defines "beyond repair" for the *de minimis* demolition exception. This definition should be removed to provide PHAs with more discretion. One commenter stated that it may not be appropriate to rehabilitate a property even if costs fall just under the HCC. Some commenters stated that "this rigid definition conflicts with the spirit of the

de minimis exception" to limit regulatory burdens.

Response: Since this proposed definition may be overly restrictive, HUD is adopting the requested change. This final rule removes language in § 970.27(c)(2) defining "beyond repair."

3. The Use of Proceeds of Demolition, Proposed § 970.19(e)(2)(i)

Comment: The proposed rule should permit as much flexibility as possible for the use of the proceeds of disposition. Several commenters stated that the listing of specific examples of permissible uses of proceeds should be removed from § 970.19(e)(2)(i). An additional section should be added stating that proceeds will be allowed for use on all projects benefiting public housing residents and low-income families. One commenter stated that the phrase "or for other low-income housing purposes" should be added to the section.

Response: HUD did not adopt suggestions by commenters to remove the examples from the rule, since HUD believes that examples provide clarity to the rule (however, the examples are not intended to limit flexibility). HUD is not adopting a suggestion by commenters to add additional explanatory language since the proposed regulatory language does permit net proceeds to be used for the provision of low-income housing or to benefit the residents of the PHA.

Comment: Proposed § 970.19(e)(2)(ii) provides that the net proceeds of disposition may be used for "leveraging amounts for securing commercial enterprises, on-site in public housing developments of the PHA, appropriate to serve the needs of the residents." Some commenters stated that this provision should be explicitly expanded to define "on-site" as including either current public housing sites or "former public housing property which is disposed of for purposes including commercial enterprises." The commenters stated that there is an urgent need for commercial enterprises, such as grocery stores, pharmacies, and other services on and around public housing developments, and HUD is unlikely to consider such enterprises as an appropriate use of current public housing property.

Response: HUD incorporates statutory language from 42 U.S.C. 1437p(a)(5)(B)(ii) in § 970.19(e)(2)(ii) and believes this language is clear. However, HUD may provide additional guidance in this area after issuance of the final rule.

4. Definition of "End of Initial Operating Period (EIOP)," Proposed § 970.5

Comment: The definition of end of initial operating period (EIOP) should be conformed to the definition in 24 CFR part 941.

Response: HUD has decided to use DOFA instead of EIOP throughout the rule, and so this final rule removes the definition of EIOP.

5. Exemption for Disposition for Homeownership Programs, Proposed § 970.3(b)(3)

Comment: Several commenters stated that they support the exemption in § 970.3(b)(3) of homeownership programs under public housing homeownership programs under sections 5(h), 21, and 32 of the 1937 Act from the disposition approval process. A commenter stated that some provisions of the current regulations conflict with the homeownership programs, and that there should be "expedited adoption" of the homeownership exemption and that notices required "to keep the PIC system up to date occur as part of the final rule making process." Commenters also stated that the exemption is not sufficiently broad and should be extended to all homeownership programs, including "Section 24/9" and "Nehemiah-like" programs. Some commenters stated that a new § 970.3(b)(16) be added as follows:

The conveyance of a public housing project or vacant land formerly containing a public housing project for the purpose of providing homeownership opportunities under Section 24, Section 9, Middle-Income, Nehemiah, or other HUD-approved homeownership program.

Response: The purpose of this exemption is to allow for the removal of units outside of this regulation for use in a statutory homeownership program. While "Nehemiah-like" activities may be eligible under HOPE VI, homeownership may or may not be the result of a HOPE VI plan. In addition, any disposition as part of a HOPE VI plan is subject to section 18 of the 1937 Act and hence this implementing regulation. On the other hand, the Section 5(h) and 32 programs both provide a statutory basis for removal of units from the program under the requirement that the units be used for homeownership. It is these types of programs to which the exemption is addressed. In order to clarify this focus, this final rule refers to "statutory predecessor" homeownership programs.

6. Time Limit for Completion, Timetable, and Plan in PHA Plan, Proposed § 970.7

Comment: Commenters objected to the 2-year time limit in § 970.7(b)(1) for completion of demolition or disposition. Because project approval, relocation of tenants, and obtaining funding take varying amounts of time depending on the project, there should be no time limit. There is a potential conflict between § 970.7(a)(4), which requires the PHA to submit with its application a general timetable, and the 2-year time limit. There are too many variables involved to limit the process to 2 years. Instead, the timetable submitted under § 970.7(a)(4) should determine the time limit.

In addition, there is no statutory basis for the 2-year limitation, and HUD should consider PHA applications for extensions under appropriate circumstances. The 2-year limitation might be impossible for larger projects to meet, and instead there should be a firm date after which no HUD money could be spent on the property except for demolition and disposition costs. A solution might be to revise § 970.7(b)(1) to require that a PHA “must either (a) commence any demolition or disposition within 2 years of the date of HUD’s approval or (b) complete any demolition or disposition within 3 years of the date of HUD’s approval.”

Response: While the majority of demolitions and dispositions can be accomplished in 2 years, there may be some cases where a longer period is required. Therefore, this final rule adopts the commenters’ suggestion and removes the 2-year requirement.

Comment: Section 970.7(a)(1) should not require an identical timetable and description in the application and the PHA’s plan. This requirement is antithetical to a streamlined process, and requires PHAs to submit, in effect, multiple applications for every demolition or disposition. The administrative burden will be extensive and will create delays, and having two identical submissions will not improve the process. For example, if, during the process, it were discovered that another property should have been included, the proposed rule would require the PHA to wait until the next annual plan submission before including the property. It should be sufficient under the statute for the PHA to specifically authorize demolition of a certain number of units in a certain neighborhood, and have the specific units listed in the demolition application. Accordingly, § 970.7(a)(1) should be revised to read:

A certification that the PHA has described the demolition or disposition in the approved PHA Annual Plan under 24 CFR part 903 (except in the case of small, high-performing, or MTW PHAs eligible for streamlined annual plan treatment), and that the application submitted pursuant to this part otherwise complies with section 18 of the Act, 42 U.S.C. 1437p, and this part * * *

The timetable requirement is unrealistic because the description in the annual plan could anticipate a slightly different formulation of units, land, or other components that the agency is actually able to submit, and it is not clear from the regulation what to do in such a case. To require the PHA plan and the application to be identical serves no rational purpose and provides (because of minor differences that may arise) a basis for challenging or delaying a legitimate and necessary undertaking. Instead, the PHA plan should be “substantially descriptive” of the proposed action in order to facilitate general public comments.

Another commenter stated that, while the intention to carry out a demolition or disposition would be stated in the annual plan, “it is often difficult to predict accurately the timeline within which a project will be played out.”

Response: Section 970.7 only requires that the description of the housing proposed to be demolished or disposed of in the approved PHA Annual Plan be identical to the application submitted pursuant to 24 CFR part 970. The Annual Plan requirements ask for limited demolition/disposition information as it relates to the planning process where the application requires more detailed information along with justifications and certifications. Since a PHA may amend the plan and submit significant changes to HUD, HUD disagrees with commenters that would suggest that only a certification be required for the contents of the PHA’s plan.

The Annual Plan’s purpose is to provide a framework for local accountability and an easily identifiable source by which public housing residents, participants, and other members of the public may locate basic PHA policies, rules, and requirements; the PHA’s mission for serving the needs of low-income families; and the PHA’s goals and objectives to enable the PHA to reach that mission. The application for demolition/disposition is a specific request for demolition and/or disposition. HUD does not believe that this requirement is duplicative or burdensome.

Comment: One commenter stated that “at a time when there is a trend towards demolishing and disposing of public

housing units, we must ensure that we do not make it easier” for PHAs to remove units. For this reason, the provision exempting small and high-performing PHAs from certifying their demolition plans in their annual plans should be removed.

Response: PHAs that are small or high performers are not entirely exempt from certifying their demolition plans. Those PHAs that are eligible to submit a streamlined plan are required to submit a certification listing the policies the PHA has revised since submission of its last Annual Plan, including those involving demolition and disposition. HUD believes that this certification is appropriate for PHAs using the streamlined plan process.

7. Resident Relocation, Proposed §§ 970.21, 970.23

a. Notice to Residents, Proposed § 970.21(e)(1)

Comment: The required 90-day notice of demolition or disposition is too short. Only 20 percent of all new rental construction in the past decade has been targeted for low-income and extremely low-income people. Given the shortage of affordable rental units for low-income and extremely low-income people, it may be extremely difficult for families to find affordable rental housing within 90 days. The rule should require 6 months’ advance notice.

Response: The statute refers to 90 days’ notice; however, it also should be noted that a PHA may not commence demolition or complete disposition until all residents are relocated. Since the rule, as proposed, addressed the commenter’s concerns, HUD does not adopt this comment.

b. Uniform Relocation Act (URA) Procedures

Comment: The rule provides an exemption from the URA, but the substitute procedures are “the functional equivalent” of URA procedures. The use of HUD funds for relocation costs (in proposed § 970.23) would reduce the availability of those funds for other necessary uses. The use of disposition proceeds for relocation should be considered for those PHAs seeking waivers from using disposition proceeds to pay down debt.

Response: HUD recognizes that much of what is required under URA is similar to the requirements in part 970. However, these requirements are statutory (see 42 U.S.C. 1437p(a)(4)(A)(iii)). HUD disagrees with the statement that funds for relocation costs would reduce the availability of those funds for other uses since other

funds are available for relocation costs. The comment pertaining to the use of disposition proceeds is not adopted because doing so would conflict with the requirements of § 970.19 of this rule and 42 U.S.C. 1437p(a)(5).

c. Use of Vouchers

Comment: Given the funding shortfalls in the voucher program (citing that only 95 percent of 2004 vouchers are being funded, and the proposed FY 2006 budget would cut project-based assistance by \$272 million), HUD should require PHAs to “confirm landlord stability” in the tenant-based and project-based voucher programs before certifying that a resident has been relocated. The commenter also states that the rule should require PHAs to track relocated families for at least 3 years, and that this data is to be shared with HUD.

Response: The comments related to vouchers are beyond the scope of this rule. As to relocation, the relocation provisions are required by statute (see 42 U.S.C. 1437p(a)(4)(A)(iii)). The statutory requirement is that demolition not commence until each resident is relocated, and the rule appropriately implements that requirement. Therefore, no change is made to the final rule.

8. Reference to HOPE VI, Proposed § 970.9(b)(3)(iii)

Comment: Section 970.9(b)(3)(iii) incorrectly references part 970 as including regulations for HOPE VI relocation. This reference should be revised.

Response: The rule addresses circumstances in which a PHA is not required to make an offering to residents. The rule takes into account (1) HOPE VI revitalization (see 42 U.S.C. 1437v), (2) mandatory removal from inventory of distressed units for which there is no potential to revitalize under 24 CFR part 971 (authorized by the 1996 Omnibus Consolidated Rescissions and Appropriation Act, Pub. L. 104-134, approved April 26, 1996), and (3) the required conversion of distressed housing to tenant-based assistance under 42 U.S.C 1437z-5.

9. Environmental Review Provisions, Proposed § 970.13

Comment: Several commenters objected to environmental review provisions in proposed § 970.13. Commenters stated that an environmental review should not be required for a known re-use unless such re-use involves PIH funds. Commenters also stated that:

The Preamble describes known use so broadly that a housing authority disposing of

property would have to get Part 58 approval for a future use such as a purely privately funded project * * *. That result places a disproportionate burden on housing authorities to obtain environmental approvals not otherwise required by the placement of HUD funds into a project. It also requires a housing authority to essentially subsidize activities by a third party outside of the public housing program. For situations in which housing authorities dispose of land that will no longer be used for public housing purposes, any required environmental review should be passed on to the purchaser. Accordingly, § 970.13(b) should be revised to read:

The environmental review is limited to the demolition or disposition action and any known re-use involving public housing funding. For the purposes of this section, known re-use means: (1) architectural, engineering, or design plans for the re-use exist and go beyond preliminary stages and (2) either of the following is true: (a) HUD public housing funding has been committed; or (b) a grant application for HUD public housing funding has been submitted to HUD.

One commenter stated that the provision that environmental review is not required for an unknown future re-use is too general, and the term “unknown” should be defined. Another commenter stated that it is unlikely that a PHA does not know the future re-use of its property. The process of obtaining an environmental review is “onerous” because the responsibility for the review is on the local governmental entity. “In reality, this usually shifts the cost burden to the housing agency because the city is unlikely to cover the expense of environmental review.”

Response: HUD believes that the proposed preamble language provided clarity regarding what is a “known future reuse” and what is an “unknown reuse” and has placed the language describing the factors used to determine whether a future re-use is “known” in the text of the final rule.

The suggested revision to § 970.13(b) is not adopted since an environmental review is applicable when there is a “federal action,” such as HUD approving an application for demolition or disposition or a related request for release of funds. The requirement is not necessarily limited to public housing funding. HUD does not agree that the environmental review is “onerous” and points out that § 970.13 does permit HUD to make a finding in accordance with 24 CFR 58.11(d) and may itself perform the environmental review under the provision of 24 CFR part 50 if a PHA objects in writing to the responsible entity performing the review under 24 CFR part 58.

Comment: Dispositions by sealed-bid solicitations should be conducted without an environmental assessment.

This would allow PHAs to “test the disposition market” without the expense of an environmental review and also give relief to the transferee from the costs of having to conduct an environmental review prior to acquisition.

Environmental review should not be required for mixed-finance projects or for de minimis demolitions under § 970.27. “There is little difference” between mixed-finance development and redevelopment using the Capital Fund, where environmental review is not required. Since the de minimis exception is for cases where the demolition action is “not substantive,” the environmental review requirement should be eliminated for these demolitions as well.

Response: See the response to the preceding comment. The commenter’s statement that environmental review is not required for development and redevelopment using the Capital Fund is not correct (see 24 CFR 58.1(b)(6)(i)). Environmental review is required because federal financial assistance is involved.

10. Substitution of Units, Proposed § 970.7(b)(3)

Comment: Section 970.7(b)(3) should be revised to allow “de minimis” substitution of units. While HUD needs to be able to track units, the proposed rule is unduly restrictive.

Redevelopment in an urban setting sometimes requires the substitution of small parcels in order to produce efficiency or meet local zoning or code requirements. The proposed provisions will cause unnecessary delays in these cases. To avoid this problem, § 970.7(b)(3) should be revised to read:

A PHA may request to either substitute units or add units to those originally included in the approved demolition or disposition application, without submitting a new application for those units, so long as such a request involves (a) units within the same project number or (b) the substitution or addition of no more than 3 units in project numbers adjacent to the project that is the subject of the disposition.

In the alternative, HUD should permit amendments to approved demolition or disposition applications. In that case, the section should be revised to read:

A PHA may either substitute units or add units to those originally included in the approved demolition or disposition application through an amendment to the application, so long as such a request involves (a) units within the same project number or (b) the substitution or addition of no more than 10 units in project numbers adjacent to the project that is the subject of the disposition.

One commenter stated that "PHAs should be permitted a greater degree of flexibility to substitute units within developments in order to effectuate the stated goal of consolidation of occupancies."

Response: The comments regarding "de minimis" substitution of units are not adopted since applications are approved for specific reasons and reviewed on a case-by-case basis. Not all units in a given public housing project are equivalent to all others, and considerations include not only the units themselves but such factors as location, amenities, and appearance. However, PHAs can apply for and obtain approval to demolish a larger set of units than they actually plan to demolish, including the units they may wish to substitute. The PHA could then substitute units within the approved larger group. Thus, PHAs can effectively have the ability to substitute units for demolition and still comply with this rule.

11. Offer to Existing Resident Organizations, Proposed § 970.11

Comment: One commenter supported the general idea of excluding demolitions (so that the offer to purchase to residents applies only to disposition), HOPE VI, and mandatory conversion projects from the resident offer requirement. However, the rule stops short by not also excluding projects where the PHA has consolidated vacancies as permitted by section 18. Excluding such developments does not seem to further any legitimate purpose, and will penalize PHAs that consolidate occupancies to improve the living conditions of their residents or to provide greater efficiency in serving residents. Why would HUD want to discourage such efforts?

Commenters stated that the procedures for the offering to residents are unduly cumbersome and time-consuming. The entire process could take from 135 to 225 days, and such a delay is unreasonable. The rule should ensure that the entire process is completed within 30 days and that the decision of the PHA is not subject to an appeal process. One commenter stated that "[p]roposal 970.11(h) would provide for an extension of the time, from 30 days to 120 days, for appealing resident organizations desiring to buy a complex, but receiving a rejected purchase proposal. Should the rejection be justified, and HUD agrees, it would seem that this proposal would further delay the redevelopment of a project. HUD should waive this requirement or certainly limit it to a nominal time

frame if there is no organized resident group."

Extending the time frame for HUD to review the PHA decision from 30 days to 120 days will place an additional burden on the PHA. Timing is a key factor, and it is essential that disposition applications be processed by the HUD Special Application Center as expeditiously as possible. However, the proposed appeals process could add an additional 120 days or more to the application approval process. In addition, the uncertainty of how long the review period could last will likely hinder a PHA's ability to consummate market transactions with private partners and could unnecessarily deter private partners from working with PHAs on real estate transactions. The time frame for HUD to render a decision on an appeal should remain 30 days.

Response: The rule does permit a PHA to consolidate without submitting a disposition application and, therefore, the offer to existing resident organizations under this rule is not applicable. The comments regarding the time for resident consultation are not adopted since the procedures for offer of sale to established eligible organizations is statutory. The comment regarding the 120-day HUD appeal process is not adopted since the 120-day period relates to the maximum amount of time HUD has to consider an appeal from a resident organization. HUD believes that there is no uncertainty as to how long the review period could last, since the period is a maximum of 120 days. HUD's experience in this area reflects the possibility that some appeals may require the full 120 days to review and render a decision.

Comment: Proposed § 970.11(d)(6), which requires the PHA to provide sales materials to the resident organization on the same day as it receives the resident's expression of interest, has too short a time frame. The provision should be revised to read, "The PHA must supply the totality of all the terms of sale and all the necessary materials to the residents no later than 3 business days from the day it receives the residents' initial expression of interest."

Response: HUD adopts this comment. This final rule revises the third sentence of § 970.11(d)(6) to read: "The PHA must supply the totality of all the terms of sale and all necessary material to the residents no later than 3 business days from the day it receives the residents' initial expression of interest."

Comment: The resident offer provision should be expanded. Contrary to HUD's assertions in the proposed rule, there are many PHAs that do not have resident organizations. HUD

should include a requirement that PHAs have to inform tenants of their right to organize and allow them the opportunity to organize before moving forward with any disposition plans. The \$25 per unit/per year for resident participation activities should be used for resident organizations.

In addition, the 60 days provided for residents to secure financing is not enough. Residents should get 90 days. This commenter stated that, contrary to proposed § 970.11(h), residents should have a right to appeal any HUD ruling in court.

Response: HUD does not adopt this comment since the resident-offer provision, as required by the existing regulation, proved to be overly time-consuming and unworkable in some situations where there was not yet a resident organization formed. The suggestion to give residents 90 days to secure financing is beyond statutory requirements and to allow an extended period of time would again delay the process unnecessarily. As for the right to judicial appeal, residents are not prevented by this section from pursuing any available judicial review; § 970.11(h) simply provides for finality of the administrative review process.

12. Exemption of Areas Used for Family Self-Sufficiency (FSS), Proposed § 970.3(b)(5)

Comment: The exemption for common and unoccupied areas being used for an FSS program is correct, but should be expanded to all areas being used for supportive services regardless of whether they are being used in the statutory FSS program.

Response: After consideration of this issue, HUD agrees that HUD's policy in this area, should "encourage and reward employment and economic self-sufficiency" (see 42 U.S.C. 1437a(2)(D)). "Employment and economic self-sufficiency" includes FSS and other HUD-approved self-sufficiency activities. This final rule revises 24 CFR 970.3(b)(5) accordingly.

13. Review Under the Public Housing Assessment System (PHAS)

Comment: Two commenters stated that when a PHA submits a property for demolition or disposition, it acknowledges that the units are in need of substantial repair and is working to resolve the problem. Such units should not be required to be reviewed under PHAS or scored as part of the PHA's overall rating. The PHA should not be penalized by HUD for the condition of the units being demolished or subject to disposition.

Response: Changes to PHAS scoring are outside the scope of this rule.

14. Exemption for Eminent Domain Taking, Proposed § 970.3(b)(8)

Comment: One commenter stated that the preamble and regulatory provisions on eminent domain taking do not match. In particular, the preamble states that HUD must be a party to the eminent domain proceeding, that HUD must approve any out-of-court settlement for the transfer of PHA-owned property, and that additional adjustments may be made to account for changes in law. These requirements do not appear in the rule text.

This commenter stated that the rule should clearly state that commencement of litigation is not required in those states such as Ohio where the first step toward an eminent domain taking occurs before litigation. This commenter also stated that material should be added to the rule that explains how to obtain HUD approval for an eminent domain taking and which HUD office to contact.

Response: HUD does not adopt this comment since the proposed regulatory provisions address the fact of the exemption only. To fully explain the process of eminent domain is beyond the scope of this rule. This final rule does not limit the start of condemnation proceedings to the filing in a court but accepts the determination as to when the condemnation proceedings commence under state law.

15. Resident Consultation Requirement, Proposed § 970.9

Comment: The rule should have “safe harbor” criteria for resident consultation that, once met, ensure that the requirement has been fulfilled. This comment cites an example of a situation where the commenter states that more than 30 meetings were held with residents over 2 years, and HUD did not find the consultation adequate but required the PHA to sign a memorandum of understanding (MOU) with the resident council in which the parties agreed to the action. This requirement exceeds any reasonable interpretation of “consultation.” This comment suggests an additional sentence be added to read:

The requirement for resident consultation will be satisfied where the PHA has invited all affected residents and resident organizations to attend at least three meetings at which the proposed demolition or disposition plan is presented in writing to those attending and the PHA affords the residents in attendance the right to present their comments orally and later in writing.

Response: The comment is not adopted. The statute requires consultation with residents who will be affected by the action and HUD believes that PHAs should have flexibility in this area. HUD shall review consultation on a case-by-case basis. HUD does not consider it appropriate to specify how many meetings are necessary for resident consultation, but as proposed § 970.9 requires, a PHA must submit copies of any written comments submitted to the PHA and any evaluation that the PHA has made of the comments.

Comment: Proposed § 970.9(c), which provides that established, eligible resident organizations may act for residents, “does not identify any standards that must be met by nonprofit organizations that may act on behalf of residents. At a minimum, nonprofit organizations should have a history of working with the residents of the affected community and should be able to demonstrate the capacity and ability to assist the resident organization with real estate transactions.”

Response: Proposed § 970.9 makes reference to 24 CFR part 964 to define what is a resident management corporation. Additionally, part 964 contains language stating that a nonprofit organization is one that is “validly incorporated under the laws of the state in which it is located.” This standard has been clarified in the final rule. HUD believes that the rule is sufficient and that adopting the comment would make the rule too prescriptive and inflexible in this regard.

16. Method of Disposition, Proposed § 970.19

Comment: There should be an additional disposition option besides public solicitation for not less than FMV, or negotiated sale. The rule should also permit a sale by public solicitation for less than FMV. Why prohibit a sale on this basis? It does not serve anyone’s interest to require the PHA to retain title solely because the purchaser willing to pay the most for it will not pay the appraised value. Whether or not to accept such a bid should be within the PHA’s discretion.

Response: The proposed rule permitted HUD to authorize sale for less than fair market value. No change is made to this final rule as a result of this comment.

Comment: Two commenters stated that the rule requires an assessment of commensurate public benefits when selling for less than FMV. HUD required a showing of commensurate public benefits for a negotiated sale of greater

than FMV. This requirement was a waste of time because there was no chance of anyone other than the offeror offering more than the negotiated price, and placed the PHA at risk of receiving less money because the offeror might decide to lower the offer and risk losing the property. The rule should be changed to allow for a negotiated price at greater than the appraised value without showing a commensurate public benefit.

Response: The rule merely requires a showing of a commensurate public benefit for a sale of less than FMV. HUD will not require a showing of commensurate public benefit for a negotiated sale of greater than FMV on and after implementation date of the final rule.

17. Program of Modifications Is Not Cost-Effective, Proposed § 970.15(a)(2)

Comment: The test for obsolescence—whether a reasonable program of modifications is cost-effective to return a development or portion to useful life—should be based on 90 percent of total development cost (TDC), rather than 100 percent of housing construction cost (HCC), as proposed.

Response: HUD has eliminated proposed references to HCC for clarity purposes and revised language in the final rule to reflect 62.5 percent of TDC for elevator structures and 57.14 percent of TDC for all other types of structures, which is the functional equivalent of 100 percent of HCC. Such a change does not eliminate the flexibility the proposed rule offered.

18. PIH Information Center (PIC) System

Comment: A trade association commenter stated that its members have found that the limitations of the PIC system for tracking public housing units make it difficult to demolish or dispose of units that should otherwise be eligible for demolition or disposition. As an example, if a PHA has two buildings under one public housing project number, and it decides to demolish one and apply for funding for replacement housing, it cannot later apply to replace the second building because, as far as the system is concerned, the PHA has already received replacement housing funding for that project.

Response: Technical issues related to PIC were not addressed in the proposed rule and are outside the scope of this rulemaking.

19. Replacement Units, Proposed § 970.31

Comment: This section, which provides that replacement housing units

may be placed back on-site if the number of units is significantly fewer than the number of units demolished, should be prefaced with the phrase, "notwithstanding any other provision of law." This phrase would mirror current law.

Response: The final rule makes the suggested change. Section 18(d) of the 1937 Act (42 U.S.C. 1437p(d)) provides for placing replacement units back on site "notwithstanding any other provision of law."

20. Application Requirements Generally, Proposed §§ 970.7, 970.29

Comment: This proposed section requires submission of too much information and should be streamlined. HUD would approve an application based on a PHA's certification as to specific conditions of the property and evidence that the PHA complied with resident consultation requirements. This should result in a simpler process. One purpose of the statute, to eliminate the burden on PHAs, is overshadowed by HUD's demand for more information than is required.

Response: The rule does reflect statutory language. PHAs determine whether a project is eligible for demolition or disposition and are permitted to certify to this unless HUD has information that the PHA's certification is incorrect. Certification forms reflect language from section 18(b) of the 1937 Act. However, the application process will be updated to conform to any changes made by this rule.

Comment: Commenters stated that proposed § 970.29, which provides the rules for HUD's rejection of an application, is too broad or too vague. Proposed § 970.29(a)(3), which states that HUD may disapprove an application if it has information inconsistent with the application, is too vague concerning what that contrary information may be. "The rule should be more explicit on what information or data may be requested so that PHAs are not subject to the vagaries of those conducting the application process." This section implies that HUD can ask for additional information after it reviews the application, and that, since HUD reviews the PHA's annual and 5-year plans, HUD personnel should know what to ask before their review. As written, the section could cause lengthy delays.

The phrase "HUD will disapprove an application if HUD determines * * *" should be changed to "HUD will disapprove an application only if HUD determines * * *" because, as written, the phrase implies that HUD may

disapprove an application for some other reason. A commenter objected to proposed § 907.29(a) because it does not define what "clearly inconsistent" means, and because the phrase "if HUD determines" vests absolute discretion in the agency regardless of how clear and convincing a case the PHA has made. This commenter stated that the section should be revised to read:

HUD will disapprove an application only if any certification by the PHA required under this part is:

- (a) Inconsistent with the approved PHA Plan; or
- (b) Arbitrary, capricious, made in bad faith, or constitutes an abuse of discretion.

Response: Language in this section reflects statutory requirements. Each proposal is unique and must be reviewed on a case-by-case basis. HUD may reject an application for demolition or disposition if the reason for the proposed action is not in conformance with the statute.

21. Other Miscellaneous Application Requirements, Proposed § 970.7

a. Estimate of Project Debt, § 970.7(a)(9)

Comment: Proposed § 970.7(a)(9), requiring PHAs to submit estimate of project debt, should be removed. This information is readily available to HUD and not to PHAs.

Response: This comment is adopted since HUD currently maintains such information. However, if HUD determines the project still has debt, it will assume the PHA is asking for a waiver of the requirement to use the proceeds to repay the debt, if the PHA has shown another use for the proceeds.

b. Consultation With Appropriate Government Officials, § 970.7(a)(15)

Comment: This requirement could "require a great deal of extra effort if the PHA's project is trying to move forward during a change in local government." The rule should allow more latitude in case of change in local political volatility.

Response: HUD disagrees with this commenter and believes that the rule does allow for latitude. Section 970.7(a)(15)(iii) provides that, where the local government consistently fails to respond to the PHA's attempt at consultation, including letters, request for meetings, public notice and other reasonable efforts, documentation of those attempts are acceptable. HUD will review such documentation on a case-by-case basis to determine if the consultation requirement was met. Because of the large amount of variations in local situations, HUD does not consider it appropriate to make a

general rule as to what action on the part of the public body will be required to meet the consultation requirement in situations where the local government does not respond.

Comment: The rule should have a "safe harbor" standard so that it is known when the PHA has satisfied the consultation requirement. Otherwise, jurisdictions could delay the process. For example, if a racially concentrated project were to be demolished to provide for integration of its residents into non-concentrated neighborhoods, a jurisdiction opposed to integration could refuse to issue the letter required in proposed § 970.7(a)(15)(ii) and allege that the PHA did not consult. By establishing threshold criteria, the PHA could establish that it had consulted adequately even absent the letter. A new paragraph should be added to § 970.7(a)(15) to read:

The requirement for consultation with local government officials will be satisfied where the PHA has either met or offered to meet with the appropriate government officials on three occasions at which the proposed demolition or disposition plan was presented in writing to those attending and the PHA has responded in writing to any written objections, comments, or concerns received within ten days following the third such meeting or offer to meet.

Response: As discussed in the response to the preceding comment, because of the variances in local situations, HUD does not believe it is possible to provide a safe harbor standard that will be applicable in all cases.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB Control number 2577-0157. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) 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 government, or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made with respect to the proposed rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable and is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule is concerned solely with the requirements for PHAs to apply for demolition or disposition of the public housing developments that they administer. However, many of the requirements of this rule were already present under the existing regulations regarding public housing demolition or disposition. To the extent that this rule would alter the previous requirements, it would do so in ways that are likely to either leave the economic impact unchanged or lower such impact. For example, because of a statutory change, the rule would no longer require PHAs to have a replacement housing plan. The rule would provide greater flexibility than before in how PHAs can use the proceeds from disposition of a property. The rule would provide for demolition of a minimal number of units without submitting an application. Thus, the rule certainly would not impose a greater administrative burden on entities than previously, and in some ways would lower the administrative requirements for demolishing or disposing of public housing units. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This 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.

Executive Order 12866, Regulatory Planning and Review

OMB reviewed this final 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 economically significant, as provided in section 3(f)(1) of the order). The docket file is available for public inspection from 8 a.m. to 5 p.m. in the Regulations Division, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

List of Subjects in 24 CFR Part 970

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

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

■ For the reasons stated in the preamble, HUD revises 24 CFR part 970 as follows:
 ■ 1. 24 CFR part 970 is revised to read as follows:

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

Sec.

- 970.1 Purpose.
 970.3 Applicability.
 970.5 Definitions.
 970.7 General requirements for HUD approval of a PHA demolition/disposition application.
 970.9 Resident participation—consultation and opportunity to purchase.

- 970.11 Procedures for the offer of sale to established eligible organizations.
 970.13 Environmental review requirements.
 970.15 Specific criteria for HUD approval of demolition requests.
 970.17 Specific criteria for HUD approval of disposition requests.
 970.19 Disposition of property; use of proceeds.
 970.21 Relocation of residents.
 970.23 Costs of demolition and relocation of displaced tenants.
 970.25 Required and permitted actions prior to approval.
 970.27 De minimis exception to demolition requirements.
 970.29 Criteria for disapproval of demolition or disposition applications.
 970.31 Replacement units.
 970.33 Effect on Operating Fund Program and Capital Fund Program.
 970.35 Reports and records.

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

§ 970.1 Purpose.

This part states requirements for HUD approval of a public housing agency's application for demolition or disposition (in whole or in part) of public housing developments assisted under Title I of the U.S. Housing Act of 1937 (Act). The regulations in 24 CFR part 85 are not applicable to this part.

§ 970.3 Applicability.

(a) This part applies to public housing developments that are owned by public housing agencies (PHAs) and that are subject to annual contributions contracts (ACCs) under the Act.

(b) This part does not apply to the following:

- (1) PHA-owned section 8 housing, or housing leased under former sections 10(c) or 23 of the Act;
- (2) Demolition or disposition before the date of full availability (DOFA) of property acquired incident to the development of a public housing project (however, this exception shall not apply to dwelling units under ACC);
- (3) The conveyance of public housing for the purpose of providing homeownership opportunities for lower-income families under sections 21 and 32 of the Act (42 U.S.C. 1437s and 42 U.S.C. 1437z-4, respectively), the homeownership program under former section 5(h) of the Act (42 U.S.C. 1437c(h)), or other predecessor homeownership programs;
- (4) The leasing of dwelling or non-dwelling space incident to the normal operation of the project for public housing purposes, as permitted by the ACC;
- (5) Making available common areas and unoccupied dwelling units in public housing projects to provide HUD-approved economic self-sufficiency services and activities to promote

employment of public housing residents;

(6) The reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without "demolition," as defined in § 970.5. (This includes the conversion of bedroom size, occupancy type, changing the status of unit from dwelling to non-dwelling.);

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

(8) A whole or partial taking by a public or quasi-public entity (taking agency) authorized to take real property by its use of police power or exercise of its power of eminent domain under state law. A taking does not qualify for the exception under this paragraph unless:

(i) The taking agency has been authorized to acquire real property by use of its police power or power of eminent domain under its state law;

(ii) The taking agency has taken at least the first step in formal proceedings under its state law; and

(iii) If the taking is for a federally assisted project, the Uniform Relocation Act (URA) (42 U.S.C. 4601 *et seq.*) applies to any resulting displacement of residents and it is the responsibility of the taking agency to comply with applicable URA requirements.

(9) Demolition after conveyance of a public housing project to a non-PHA entity in accordance with an approved homeownership program under Title III of the Cranston-Gonzalez National Affordable Housing Act (HOPE I) (42 U.S.C. 1437aaa note);

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

(11) A public housing property that is conveyed by a PHA prior to DOFA to enable an owner entity to develop the property using the mixed-finance development method;

(12) Disposition of public housing property for development pursuant to the mixed-finance development method at 24 CFR part 941, subpart F;

(13) Demolition under the de minimis exception in § 970.27, except that the environmental review provisions apply, including the provisions at § 970.7(a)(16) and 970.13(b) of this part;

(14) Demolition (but not disposition) of severely distressed units as part of a revitalization plan under section 24 of the Act (42 U.S.C. 1437v) (HOPE VI) approved after October 21, 1998;

(15) Demolition (but not disposition) of public housing developments removed from a PHA's inventory under

section 33 of the Act, 42 U.S.C. 1437z-5.

§ 970.5 Definitions.

ACC, or *annual contributions contract*, is defined in 24 CFR 5.403.

Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Appropriate government officials mean the Chief Executive Officer or officers of a unit of general local government.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing at HUD.

Chief Executive Officer of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the chief executive officer of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

Demolition means the removal by razing or other means, in whole or in part, of one or more permanent buildings of a public housing development. A demolition involves any four or more of the following:

- (1) Envelope removal (roof, windows, exterior walls);
- (2) Kitchen removal;
- (3) Bathroom removal;
- (4) Electrical system removal (unit service panels and distribution circuits); or

- (5) Plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both).

Disposition means the conveyance or other transfer by the PHA, by sale or other transaction, of any interest in the real estate of a public housing development, subject to the exceptions stated in § 970.3.

DOFA, or date of full availability, means the last day of the month in which substantially all (95 percent or more) of the units in a housing development are available for occupancy.

Firm financial commitment means a commitment that obligates a creditable source, lender, or equity provider, to the lending or equity investment of a specific sum of funds to be made on or before a specific date(s) and may contain contingencies or conditions that must be satisfied by the borrower (or entity receiving equity investments) before the closing of the transaction.

The condition of a firm commitment must be that it is enforceable by the borrower (or entity receiving the equity investment) upon the satisfaction of all contingencies or conditions.

PHA Plan—Means the PHA's initial, annual, and 5-year submissions under section 5A of the U.S. Housing Act of 1937, 42 U.S.C. 1437c-1.

Resident Advisory Board (RAB) has the same meaning as in § 903.13(a) of this title.

Resident Council means a resident organization, the role and requirements of which are as described in 24 CFR part 964.

Total development cost has the same meaning as in 24 CFR 941.103.

§ 970.7 General requirements for HUD approval of a PHA demolition/disposition application.

(a) *Application for HUD Approval.* A PHA must obtain written approval from HUD before undertaking any transaction involving demolition or disposition of PHA-owned property under the ACC. Where a PHA demolishes or disposes of public housing property without HUD approval, no HUD funds may be used to fund the costs of demolition or disposition or reimburse the PHA for those costs. HUD will approve an application for demolition or disposition upon the PHA's submission of an application with the required certifications and the supporting information required by this section and §§ 970.15 or 970.17. Section 970.29 specifies criteria for disapproval of an application. Approval of the application under this part does not imply approval of a request for additional funding, which the PHA must make separately under a program that makes available funding for this purpose. The PHA shall submit the application for demolition or disposition and the timetable in a time and manner and in a form prescribed by HUD. The supporting information shall include:

(1) A certification that the PHA has described the demolition or disposition in the PHA Annual Plan and timetable under 24 CFR part 903 (except in the case of small or high-performing PHAs eligible for streamlined annual plan treatment), and that the description in the PHA Annual Plan is identical to the application submitted pursuant to this part and otherwise complies with section 18 of the Act (42 U.S.C. 1437p) and this part;

(2) A description of all identifiable property, by development, including land, dwelling units, and other improvements, involved in the proposed demolition or disposition;

(3) A description of the specific action proposed, such as:

(i) Demolition, disposition, or demolition with disposition;

(ii) If disposition is involved, the method of sale;

(4) A general timetable for the proposed action(s), including the initial contract for demolition, the actual demolition, and, if applicable, the closing of sale or other form of disposition;

(5) A statement justifying the proposed demolition or disposition under the applicable criteria of §§ 970.15 or 970.17;

(6) If applicable, a plan for the relocation of tenants who would be displaced by the proposed demolition or disposition (including persons with disabilities requiring reasonable accommodations and a relocation timetable as prescribed in § 970.21);

(7) A description with supporting evidence of the PHA's consultations with residents, any resident organizations, and the Resident Advisory Board, as required under § 903.9 of this title;

(8) In the case of disposition only, evidence of compliance with the offering to resident organizations, as required under § 970.9;

(9) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal, unless otherwise determined by HUD, as described in § 970.19(c);

(10) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 970.19;

(11) An estimate of costs for any required relocation housing, moving costs, and counseling.

(12) Where the PHA is requesting a waiver of the requirement for the application of proceeds for repayment of outstanding debt, the PHA must request such a waiver in its application, along with a description of the proposed use of the proceeds;

(13) A copy of a resolution by the PHA's Board of Commissioners approving the specific demolition or disposition application (or, in the case of the report required under § 970.27(e) for "de minimis" demolitions, the Board of Commissioner's resolution approving the "de minimis" action) for that development or developments or portions thereof. The resolution must be signed and dated after all resident and local government consultation has been completed;

(14) Evidence that the application was developed in consultation with appropriate government officials as defined in § 970.5, including:

(i) A description of the process of consultation with local government officials, which summarizes dates, meetings, and issues raised by the local government officials and the PHA's responses to those issues;

(ii) A signed and dated letter in support of the application from the chief executive officer of the unit of local government that demonstrates that the PHA has consulted with the appropriate local government officials on the proposed demolition or disposition;

(iii) Where the local government consistently fails to respond to the PHA's attempts at consultation, including letters, requests for meetings, public notices, and other reasonable efforts, documentation of those attempts;

(iv) Where the PHA covers multiple jurisdictions (such as a regional housing authority), the PHA must meet these requirements for each of the jurisdictions where the PHA is proposing demolition or disposition of PHA property;

(15) An approved environmental review of the proposed demolition or disposition in accordance with 24 CFR parts 50 or 58 for any demolition or disposition of public housing property covered under this part, as required under 24 CFR 970.13;

(16) A certification that the demolition or disposition application does not violate any remedial civil rights order or agreement, voluntary compliance agreement, final judgment, consent decree, settlement agreement, or other court order or agreement;

(17) Any additional information necessary to support the application and assist HUD in making determinations under this part.

(b) *Completion of demolition/disposition or rescissions of approval.*

(1) HUD will consider a PHA's request to rescind an earlier approval to demolish or dispose of public housing property, where a PHA submits a resolution from the Board of Commissioners and submits documentation that the conditions that originally led to the request for demolition or disposition have significantly changed or been removed.

(2) The Assistant Secretary will not approve any request by the PHA to either substitute units or add units to those originally included in the approved demolition or disposition application, unless the PHA submits a new application for those units that meet the requirements of this part.

§ 970.9 Resident participation—consultation and opportunity to purchase.

(a) *Resident consultation.* PHAs must consult with residents who will be affected by the proposed action with respect to all demolition or disposition applications. The PHA must provide with its application evidence that the application was developed in consultation with residents who will be affected by the proposed action, any resident organizations for the development, PHA-wide resident organizations that will be affected by the demolition or disposition, and the Resident Advisory Board (RAB). The PHA must also submit copies of any written comments submitted to the PHA and any evaluation that the PHA has made of the comments.

(b) *Resident organization offer to sell—applicability.* In the situation where the PHA applies to dispose of a development or portion of a development:

(1) The PHA shall, in appropriate circumstances as determined by the Assistant Secretary, initially offer the property proposed for disposition to any eligible resident organization, eligible resident management corporation as defined in 24 CFR part 964, or to a nonprofit organization acting on behalf of the residents at any development proposed for disposition, if the resident entity has expressed an interest in purchasing the property for continued use as low-income housing. The entity must make the request in writing to the PHA, no later than 30 days after the resident entity has received the notification of sale from the PHA;

(2) If the resident entity has expressed an interest in purchasing the property for continued use as low-income housing, the entity, in order for its purchase offer to be considered, must:

(i) In the case of a nonprofit organization, be acting on behalf of the residents of the development; and

(ii) Demonstrate that it has obtained a firm commitment for the necessary financing within 60 days of serving its written notice of interest under paragraph (b)(1) of this section.

(3) The requirements of this section do not apply to the following cases, which have been determined not to present an appropriate opportunity for purchase by a resident organization:

(i) A unit of state or local government requests to acquire vacant land that is less than two acres in order to build or expand its public services (a local government wishes to use the land to build or establish a police substation); or

(ii) A PHA seeks disposition outside the public housing program to privately

finance or otherwise develop a facility to benefit low-income families (e.g., day care center, administrative building, mixed-finance housing under 24 CFR part 941 subpart F, or other types of low-income housing);

(iii) Units that have been legally vacated in accordance with the HOPE VI program, the regulations at 24 CFR part 971, or the mandatory conversion regulations at 24 CFR part 972, excluding developments where the PHA has consolidated vacancies;

(iv) Distressed units required to be converted to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z-5); or

(vi) Disposition of non-dwelling properties, including administration and community buildings, and maintenance facilities.

(4) If the requirements of this section are not applicable, as provided in paragraph (b)(3) of this section, the PHA may proceed to submit to HUD its application under this part to dispose of the property, or a portion of the property, without affording an opportunity for purchase by a resident organization. However, PHAs must consult with their residents in accordance with paragraph (a) of this section. The PHA must submit documentation with date and signatures to support the applicability of one of the exceptions in paragraph (b)(3) of this section. Examples of appropriate documentation include, but are not limited to: a letter from the public body that wants to acquire the land, copies of memoranda or letters approving the PHA's previous application under part 970 or mandatory conversion plan, and the HUD transmittal document approving the proposed revitalization plan.

(c) *Established eligible organizations.* Where there are eligible resident organizations, eligible resident management corporations as defined in 24 CFR part 964, or nonprofit organizations acting on behalf of the residents as defined in 24 CFR part 964 (collectively, "established eligible organizations"), that have expressed an interest, in writing, to the PHA within 30 days of the date of notification of the proposed sale, in purchasing the property for continued use as low-income housing at the affected development, the PHA shall follow the procedures for making the offer described in § 970.11.

§ 970.11 Procedures for the offer of sale to established eligible organizations.

In making an offer of sale to established eligible organizations as defined in § 970.9(c) in the case of

proposed disposition, the PHA shall proceed as follows:

(a) *Initial written notification of sale of property.* The PHA shall send an initial written notification to each established eligible organization (for purposes of this section, an established eligible organization that has been so notified is a "notified eligible organization") of the proposed sale of the property. The notice of sale must include, at a minimum, the information listed in paragraph (d) of this section;

(b) *Initial expression of interest.* All notified eligible organizations shall have 30 days to initially express an interest, in writing, in the offer ("initial expression of interest"). The initial expression of interest need not contain details regarding financing, acceptance of an offer of sale, or any other terms of sale.

(c) *Opportunity to obtain firm financial commitment by interested entity.* If a notified eligible organization expresses interest in writing during the 30-day period referred to in paragraph (b) of this section, no disposition of the property shall occur during the 60-day period beginning on the date of the receipt of the written notice of interest. During this period, the PHA must give the entity expressing interest an opportunity to obtain a firm financial commitment as defined in § 970.5 for the financing necessary to purchase the property;

(d) *Contents of initial written notification.* The initial written notification to established eligible organizations under paragraph (a) of this section must include at a minimum the following:

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

(2) A copy of the appraisal of the property and any terms of sale;

(3) Disclosure and description of the PHA's plans for reuse of land, if any, after the proposed disposition;

(4) An identification of available resources (including its own and HUD's) to provide technical assistance to the organization to help it to better understand its opportunity to purchase the development, the development's value, and potential use;

(5) A statement that public housing developments sold to resident organizations will not continue to

receive capital and operating subsidy after the completion of the sale;

(6) Any and all terms of sale that the PHA will require, including a statement that the purchaser must use the property for low-income housing. If the PHA does not know all the terms of the offer of sale at the time of the notice of sale, the PHA shall include all the terms of sale of which it is aware. The PHA must supply the totality of all the terms of sale and all necessary material to the residents no later than 3 business days from the day it receives the residents' initial expression of interest;

(7) A date by which an established eligible organization must express its interest, in writing, in response to the PHA's offer to sell the property proposed for demolition or disposition, which shall be up to 30 days from the date of the official written offer of sale from the PHA;

(8) A statement that the established eligible organization will be given 60 days from the date of the PHA's receipt of its letter expressing interest to develop and submit a proposal to the PHA to purchase the property and to obtain a firm financial commitment, as defined in § 970.5. The statement shall explain that the PHA shall approve the proposal from an organization if the proposal meets the terms of sale and is supported by a firm commitment for financing. The statement shall also provide that the PHA can consider accepting an offer from the organization that differs from the terms of sale. The statement shall explain that if the PHA receives proposals from more than one organization, the PHA shall select the proposal that meets the terms of sale, if any. In the event that two proposals from the development to be sold meet the terms of sale, the PHA shall choose the best proposal. If no proposal meets the terms of sale, the PHA in its discretion may or may not select the best proposal.

(e) *Response to the notice of sale.* The established eligible organization or organizations have up to 30 days to respond to the notice of sale from the PHA. The established eligible organization shall respond to the PHA's notice of sale by means of an initial expression of interest under paragraph (b) of this section.

(f) *Resident proposal.* The established eligible organization has up to 60 days from the date the PHA receives its initial expression of interest and provides all necessary terms and information to prepare and submit a proposal to the PHA for the purchase of the property of which the PHA plans to dispose, and to obtain a firm commitment for financing. The

resident's proposal shall provide all the information requested in paragraph (i) of this section.

(g) *PHA Review of Proposals.* The PHA has up to 60 days from the date of receipt of the proposal or proposals to review the proposals and determine whether they meet the terms of sale described in the PHA's offer or offers. If the PHA determines that the proposal meets the terms of sale, within 14 days of the date of this determination, the PHA shall notify the organization of that fact and that the proposal has been accepted. If the PHA determines that the proposal differs from the terms of sale, the PHA may accept or reject the proposal at its discretion;

(h) *Appeals.* The established eligible organization has the right to appeal the PHA's decision to the Assistant Secretary for Public and Indian Housing, or his designee, by sending a letter of appeal within 30 days of the date of the PHA's decision to the field office director. The letter of appeal must include copies of the proposal and any related correspondence, along with a statement of reasons why the organization believes the PHA should have decided differently. HUD shall render a decision within 30 days, and notify the organization and the PHA by letter within 14 days of such decision. If HUD cannot render a decision within 30 days, HUD will so notify the PHA and the established eligible organization in writing, in which case HUD will have an additional 30 days in which to render a decision. HUD may continue to extend its time for decision in 30-day increments for a total of 120 days. Once HUD renders its decision, there is no further administrative appeal or remedy available.

(i) *Contents of the organization's proposal.* The established eligible organization's proposal shall at a minimum include the following:

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

(2) A description of current or past activities that demonstrate the organization's organizational and management capability, or the planned acquisition of such capability through a partner or other outside entities (in which case the proposal should state how the partner or outside entity meets this requirement);

(3) To the extent not included in paragraph (i)(2) of this section, the organization's experience in the development of low-income housing, or planned arrangements with partners or outside entities with such experience (in which case the proposal should state how the partner or outside entity meets this requirement);

(4) A statement of financial capability;

(5) A description of involvement of any non-resident organization (such as non-profit, for-profit, governmental, or other entities), if any, the proposed division of responsibilities between the non-resident organization and the established eligible organization, and the non-resident organization's financial capabilities;

(6) A plan for financing the purchase of the property and a firm financial commitment as stated in paragraph (c) of this section for funding resources necessary to purchase the property and pay for any necessary repairs;

(7) A plan for using the property for low-income housing;

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

(9) Justification for purchase at less than the fair market value in accordance with § 970.19(a) of this part, if appropriate;

(10) Estimated time schedule for completing the transaction;

(11) Any additional items necessary to respond fully to the PHA's terms of sale;

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

(13) A proposed date of settlement, generally not to exceed 6 months from the date of PHA approval of the proposal, or such period as the PHA may determine to be reasonable.

(j) *PHA obligations.* The PHA must:

(1) Prepare and distribute the initial notice of sale pursuant to 24 CFR 970.11(a), and, if any established eligible organization expresses an interest, any further documents necessary to enable the organization or organizations to make an offer to purchase;

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

(3) Prepare certifications, where appropriate, as provided in paragraph (k) of this section;

(4) Comply with its obligations under § 970.7(a) regarding tenant consultation and provide evidence to HUD that the PHA has met those obligations. The PHA shall not act in an arbitrary manner and shall give full and fair consideration to any offer from a qualified resident management corporation, resident council of the affected development, or a nonprofit organization acting on behalf of the residents, and shall accept the proposal if the proposal meets the terms of sale.

(k) *PHA post-offer requirements.* After the resident offer, if any, is made, the PHA shall:

(1) Submit its disposition application to HUD in accordance with section 18 of the Act and this part. The disposition application must include complete documentation that the resident offer provisions of this part have been met. This documentation shall include:

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

(ii) The responses from each organization.

(2)(i) If the PHA accepts the proposal of an established eligible organization, the PHA shall submit revisions to its disposition application to HUD in accordance with section 18 of the Act and this part reflecting the arrangement with the resident organization, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(ii) If the PHA rejects the proposal of the resident organization, the resident organization may appeal as provided in paragraph (h) of this section. Once the appeal is resolved, or, if there is no appeal, and the 30 days allowed for appeal has passed, HUD shall proceed to approve or disapprove the application.

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

(i) An official board resolution or its equivalent from each established eligible organization stating that such organization has received the PHA offer, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the disposition application;

(ii) A certification from the executive director or board of commissioners of the PHA that the 30-day time frame to express interest has expired and no response was received to its offer; or

(iii) A certification from the executive director or board of commissioners of the PHA with supporting documentation that the offer was otherwise rejected.

§ 970.13 Environmental review requirements.

(a) Activities under this part (including de minimis demolition pursuant to § 970.27) are subject to HUD environmental regulations in 24 CFR part 58. However, HUD may make a finding in accordance with 24 CFR 58.11(d) of this title and may itself perform the environmental review under the provisions of 24 CFR part 50

if a PHA objects in writing to the responsible entity performing the review under 24 CFR part 58.

(b) The environmental review is limited to the demolition or disposition action and any known re-use, and is not required for any unknown future re-use. Factors that indicate that the future site reuse can reasonably be considered to be known include the following:

(1) Private, Federal, state, or local funding for the site reuse has been committed;

(2) A grant application involving the site has been filed with the Federal government or a state or local unit of government;

(3) The Federal government or a state or unit of local government has made a commitment to take an action, including a physical action, that will facilitate a particular reuse of the site; and

(4) Architectural, engineering, or design plans for the reuse exist that go beyond preliminary stages.

(c) In the case of a demolition or disposition made necessary by a disaster that the President has declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*, or a disaster that has been declared under state law by the officer or entity with legal authority to make such declaration, pursuant to 24 CFR 50.43 and 24 CFR 58.33, the provisions of 40 CFR 1506.11 will apply.

§ 970.15 Specific criteria for HUD approval of demolition requests.

(a) In addition to other applicable requirements of this part, HUD will approve an application for demolition upon the PHA's certification that it meets the following statutory criteria, unless the application meets the criteria for disapproval under 24 CFR 270.29. An application for the demolition of all or a portion of a public housing project must certify that the project:

(1) Is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes, and no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life; and

(2) In the case of an application for demolition of a portion of a project, the demolition will help to ensure the viability of the remaining portion of the project.

(b) As to paragraph (a)(1) of this section:

(1) Major problems indicative of obsolescence are:

(i) As to physical condition: Structural deficiencies that cannot be corrected in a cost-effective manner

(settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), or other design or site problems (severe erosion or flooding);

(ii) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with 24 CFR part 50, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use; or

(iii) There are other factors that have seriously affected the marketability, usefulness, or management of the property.

(2) HUD generally shall not consider a program of modifications to be cost-effective if the costs of such program exceed 62.5 percent of total development cost (TDC) for elevator structures and 57.14 percent of TDC for all other types of structures in effect at the time the application is submitted to HUD.

(c) As to paragraph (a)(2) of this section, a partial demolition will be considered to ensure the viability of the remaining portion if the application certifies that the demolition will reduce development density to permit better access by emergency, fire, or rescue services, or improve marketability by reducing the density to that of the neighborhood or other developments in the PHA's inventory.

§ 970.17 Specific criteria for HUD approval of disposition requests.

In addition to other applicable requirements of this part, HUD will approve a request for disposition by sale or other transfer of a public housing project or other real property if the PHA certifies that the retention of the property is not in the best interests of the residents or the PHA for at least one of the following reasons, unless information available to HUD is inconsistent with the certification:

(a) Conditions in the area surrounding the project (density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the PHA;

(b) Disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing developments;

(c) The PHA has otherwise determined the disposition to be appropriate for reasons that are consistent with the goals of the PHA

and the PHA Plan and that are otherwise consistent with the Act;

(d) In the case of disposition of property other than dwelling units (community facilities or vacant land), the PHA certifies that:

(1) The non-dwelling facilities or land exceeds the needs of the development (after DOFA); or

(2) The disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the development.

§ 970.19 Disposition of property; use of proceeds.

(a) Where HUD approves the disposition of real property of a development, in whole or in part, the PHA shall dispose of the property promptly for not less than fair market value (in which case there is no showing of commensurate public benefit required), unless HUD authorizes negotiated sale for reasons found to be in the best interests of the PHA or the federal government; or dispose of the property for sale for less than fair market value (where permitted by state law), based on commensurate public benefits to the community, the PHA, or the federal government justifying such an exception. General public improvements, such as streets and bridges, do not qualify as commensurate public benefits.

(b) A PHA may pay the reasonable costs of disposition, and of relocation of displaced tenants allowable under § 970.21, out of the gross proceeds, as approved by HUD.

(c) To obtain an estimate of the fair market value before the property is advertised for bid, the PHA shall have one independent appraisal performed on the property proposed for disposition, unless HUD determines that:

(1) More than one appraisal is warranted; or

(2) Another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data.

(d) To obtain an estimate of the fair market value when a property is not publicly advertised for bid, HUD may accept a reasonable valuation of the property.

(e) A PHA shall use net proceeds, including any interest earned on the proceeds (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section), subject to HUD approval, as follows:

(1) Unless waived by HUD, for the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; and

(2) To the extent that any net proceeds remain, after the application of proceeds in accordance with paragraph (e)(1) of this section, for:

(i) The provision of low-income housing or to benefit the residents of the PHA, through such measures as modernization of lower-income housing or the acquisition, development, or rehabilitation of other properties to operate as lower-income housing; or

(ii) Leveraging amounts for securing commercial enterprises, on-site in public housing developments of the PHA, appropriate to serve the needs of the residents.

(f) For dispositions for the purpose stated in § 970.17(b), a PHA must demonstrate to the satisfaction of HUD that the replacement units are being provided in connection with the disposition of the property. A PHA may use sale proceeds in accordance with paragraph (e) to fund the replacement units.

§ 970.21 Relocation of residents.

(a) *Relocation of residents on a nondiscriminatory basis and relocation resources.* A PHA must offer each family displaced by demolition or disposition comparable housing that meets housing quality standards (HQS) and is located in an area that is generally not less desirable than the location of the displaced persons. The housing must be offered on a nondiscriminatory basis, without regard to race, color, religion, creed, national origin, handicap, age, familial status, or gender, in compliance with applicable Federal and state laws. For persons with disabilities displaced from a unit with reasonable accommodations, comparable housing should include similar accommodations. Such housing may include:

(1) Tenant-based assistance, such as assistance under the Housing Choice Voucher Program, 24 CFR part 982, except that such assistance will not be considered "comparable housing" until the family is actually relocated into such housing;

(2) Project-based assistance; or

(3) Occupancy in a unit operated or assisted by the PHA at a rental rate paid by the family that is comparable to the rental rate applicable to the unit from which the family is vacated.

(b) *In-place tenants.* A PHA may not complete disposition of a building until all tenants residing in the building are relocated.

(c) *Financial resources.* (1) Sources of funding for relocation costs related to demolition or disposition may include, but are not limited to, capital funds or other federal funds currently available for this purpose;

(2) If Federal financial assistance under the Community Development Block Grant (CDBG) program, 42 U.S.C. 5301 *et seq.* (including loan guarantees under section 108 of the Housing and Community Development Act of 1974, 42 U.S.C. 5308 *et seq.*); the Urban Development Action Grant (UDAG) program, 42 U.S.C. 5318 *et seq.*; or HOME program, 42 U.S.C. 12701 *et seq.* is used in connection with the demolition or disposition of public housing, the project is subject to section 104(d) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(d) (as amended)), including the relocation payment provisions and the anti-displacement provisions, which require that comparable replacement dwellings be provided within the community for the same number of occupants as could have been housed in the occupied and vacant, occupiable low- and moderate-income units demolished or converted to another use.

(d) *Relocation timetable.* For the purpose of determining operating subsidy eligibility under 24 CFR part 990, a PHA must provide the following information in the application or immediately following application submission:

(1) The number of occupied units at the time of demolition/disposition application approval;

(2) A schedule for the relocation of those residents on a month-by-month basis.

(e) The PHA is responsible for the following:

(1) Notifying each family residing in the development of the proposed demolition or disposition 90 days prior to the displacement date, except in cases of imminent threat to health and safety. The notification must include a statement that:

(i) The development or portion of the development will be demolished or disposed of;

(ii) The demolition of the building in which the family resides will not commence until each resident of the building has been relocated;

(iii) Each family displaced by such action will be provided comparable housing, which may include housing with reasonable accommodations for disability, if required under section 504 of the Rehabilitation Act of 1973 and HUD's regulations in 24 CFR part 8, as described in paragraph (a) of this section;

(2) Providing for the payment of the actual and reasonable relocation expenses of each resident to be displaced, including residents requiring reasonable accommodations because of disabilities;

(3) Ensuring that each displaced resident is offered comparable replacement housing as described in paragraph (b) of this section; and

(4) Providing any necessary counseling for residents that are displaced.

(f) In addition, the PHA's plan for the relocation of residents who would be displaced by the proposed demolition or disposition must indicate:

(1) The number of individual residents to be displaced;

(2) The type of counseling and advisory services the PHA plans to provide;

(3) What housing resources are expected to be available to provide housing for displaced residents; and

(4) An estimate of the costs for counseling and advisory services and resident moving expenses, and the expected source for payment of these costs.

(g) The Uniform Relocation Act does not apply to demolitions and dispositions under this part.

§ 970.23 Costs of demolition and relocation of displaced tenants.

Where HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a program under the Capital Fund Program (24 CFR part 905), the costs of demolition and of relocation of displaced residents may be included in the budget funded with capital funds pursuant to section 9(d) of the Act (42 U.S.C. 1437g(d)) or awarded HOPE VI or other eligible HUD funds.

§ 970.25 Required and permitted actions prior to approval.

(a) A PHA may not take any action to demolish or dispose of a public housing development or a portion of a public housing development without obtaining HUD approval under this part. HUD funds may not be used to pay for the cost to demolish or dispose of a public housing development or a portion of a public housing development, unless HUD approval has been obtained under this part. Until the PHA receives HUD approval, the PHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families. However, the PHA may engage in planning activities, analysis, or consultations without seeking HUD approval. Planning activities may include project viability

studies, capital planning, or comprehensive occupancy planning. The PHA must continue to provide full housing services to all residents that remain in the development. A PHA should not re-rent these units at turnover while HUD is considering its application for demolition or disposition. However, the PHA's operating subsidy eligibility will continue to be calculated as stated in 24 CFR part 990.

(b) A PHA may consolidate occupancy within or among buildings of a development, or among developments, or with other housing for the purposes of improving living conditions of, or providing more efficient services to residents, without submitting a demolition or disposition application.

§ 970.27 De minimis exception to demolition requirements.

(a) A PHA may demolish units without submitting an application if the PHA is proposing to demolish not more than the lesser of:

(1) five dwelling units; or
(2) 5 percent of the total dwelling units owned by the PHA over any 5-year period.

(b) The 5-year period referred to in paragraph (a)(2) of this section is the 5 years counting backward from the date of the proposed de minimis demolition, except that any demolition performed prior to October 21, 1998, will not be counted against the five units or 5 percent of the total, as applicable. For example, if a PHA that owns 1,000 housing units wishes to demolish units under this de minimis provision on July 1, 2004, and previously demolished two units under this provision on September 1, 2000, and two more units on July 1, 2001, the PHA would be able to demolish one additional unit for a total of five in the preceding 5 years. As another example, if a PHA that owns 60 housing units as of July 1, 2004, had demolished two units on September 1, 2000, and one unit on July 1, 2001, that PHA would not be able to demolish any further units under this "de minimis" provision until after September 1, 2005, because it would have already demolished 5 percent of its total.

(1) In order to qualify for this exemption, the space occupied by the

demolished unit must be used for meeting the service or other needs of public housing residents (use of space to construct a laundry facility, community center, child care facility, office space for a general provider; or for use as open space or garden); or

(2) The unit being demolished must be beyond repair.

(d) PHAs utilizing this section will comply with environmental review requirements at 24 CFR 970.13 and, if applicable, the requirements of 24 CFR 8.23.

(e) For recordkeeping purposes, PHAs that wish to demolish units under this section shall submit the information required in § 970.7(a)(1), (2), (12), (13), and (14). HUD will accept a certification from the PHA that one of the two conditions in paragraph (c) of this section apply unless HUD has independent information that requirements for "de minimis" demolition have not been met.

§ 970.29 Criteria for disapproval of demolition or disposition applications.

HUD will disapprove an application if HUD determines that:

(a) Any certification made by the PHA under this part is clearly inconsistent with:

(1) The PHA Plan;
(2) Any information and data available to HUD related to the requirements of this part, such as failure to meet the requirements for the justification for demolition or disposition as found in §§ 970.15 or 970.17; or

(3) Information or data requested by HUD; or

(b) The application was not developed in consultation with:

(1) Residents who will be affected by the proposed demolition or disposition as required in § 970.9; and

(2) Each resident advisory board and resident council, if any, of the project (or portion thereof) that will be affected by the proposed demolition or disposition as required in § 970.9, and appropriate government officials as required in § 970.7.

§ 970.31 Replacement units.

Notwithstanding any other provision of law, replacement public housing

units may be built on the original public housing location or in the same neighborhood as the original public 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]

Dated: October 12, 2006.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

[FR Doc. E6-17724 Filed 10-23-06; 8:45 am]

BILLING CODE 4210-67-P