



Federal Register

**Wednesday,
December 15, 2004**

Part III

Department of Housing and Urban Development

24 CFR Part 970

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

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 970

[Docket No. FR-4598-P-01; HUD-2004-0013]

RIN 2577-AC20

**Demolition or Disposition of Public
Housing Projects**

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

ACTION: Proposed rule.

SUMMARY: This proposed 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 proposed rule seeks comments on these provisions as well as any other provision of this proposed rule.

DATES: Comment Due Date: February 14, 2005.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at <http://www.regulations.gov>; or
- The HUD electronic Web site at <http://www.epa.gov/feddocket>. Follow the link entitled, "View Open HUD Dockets". Commenters should follow the instructions provided on that site to electronically submit their comments.

Facsimile (FAX) comments are *not* acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at <http://www.epa.gov/feddocket>. Comments that are submitted electronically to the above Web sites, or that are submitted to the

HUD Regulations Division at the above address, during the 60-day opportunity for notice and comment, are placed in the public rules docket and are available to the public for inspection and copying. As a result, these comments are in the public domain and will be treated by the Department as public comments.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, 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—Changes to Demolition or Disposition Requirements Under the Quality Housing and Work Responsibility Act of 1998

Section 531 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, approved October 21, 1998) (QHWRA) amended the provisions on public housing demolition or disposition found in Section 18 of the United States Housing Act of 1937, 42 U.S.C. 1437p (Section 18). QHWRA changed both the general standard for approval of applications for demolition or disposition of public housing stock, and many of the specific procedures for these actions. During the interim period between the effective date of QHWRA revisions, October 21, 1998, and the publication of a final rule, PIH Notice 99-19, extended by PIH notices 2000-16, 2001-38, 2002-23, and most recently, 2003-9, implements Section 18 as amended. The notices are available from HUD's Web site at <http://www.hud.gov>, or through HUDclips, <http://www.hudclips.org>. In addition, a copy of the notice can be obtained by calling 800-767-7468 and asking for PIH Notice 99-19, as extended.

Prior to QHWRA, HUD could not approve a demolition or disposition of a public housing project or portion of the project unless HUD determined that, in the case of an application for demolition, the project was obsolete and unusable for public housing, and that no reasonable program of modifications would be feasible to return the project to useful life. For a disposition application, the PHA, prior to QHWRA, had to determine that retention of the

property was not in the best interests of the tenants or the PHA because (1) developmental changes in the area surrounding the project adversely affected the health or safety of the tenants or the feasible operation of the project by the PHA; (2) the disposition would have allowed the acquisition of better housing stock that would have been more effectively and efficiently operated as low-income housing available in the community; or (3) the Secretary determined other factors were consistent with the best interests of the tenants and PHA and not inconsistent with the U.S. Housing Act of 1937 (1937 Act).

Section 18 as amended alters these standards so that HUD is required to approve the demolition or disposition application if the PHA certifies to the existence of specified factors supporting those actions. HUD is not required to approve an application if HUD has information clearly inconsistent with the certification, or has information that the PHA has failed to comply with the consultation requirements. For demolition, the PHA has to certify that the project is "unsuitable" (rather than "unusable") for public housing, and that no reasonable program of modifications is "cost-effective" (rather than "feasible") to return the project to useful life. For disposition, the PHA must certify that retention of the project is not in the best interest of the residents or the PHA, for reasons specified in the statute. This procedure is similar to the procedure under prior law, except that the factors previously used have been revised to eliminate the requirement that disposition allow for the acquisition of replacement housing that will preserve the same total amount of low-income housing stock in the community, and to no longer require as a prerequisite "developmental changes" in the area surrounding the project. Under the current law, disposition is justified if the PHA can certify that conditions in the area surrounding the project adversely affect the health or safety of the residents or the feasible operation of the project, or disposition allows for the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing. In addition to these changes, QHWRA alters other procedures related to demolition and disposition, removes some former requirements, and adds new requirements as further discussed below.

QHWRA eliminates the one-for-one replacement requirement. One-for-one replacement of demolished units or those removed from a PHA's inventory

through disposition was first eliminated in Section 1002 of the 1995 Rescissions Act (Pub. L. 104–19, approved July 27, 1995), and that change was reenacted on a year-to-year basis until 1998.¹ As a result of the elimination of one-for-one replacement, a replacement housing plan is no longer required as part of a demolition or disposition application.

QHWRA does contain very specific provisions regarding the notification and relocation of any residents living in a building that the PHA plans to demolish or remove from its inventory through disposition, while providing that the Uniform Relocation Act does not apply to demolition or disposition under Section 18. Except for when there is an imminent threat to health and safety, the PHA must notify each family living in a building that is subject to demolition or disposition 90 days prior to the displacement date of the impending action. The notice must state that the PHA will not commence demolition or complete disposition until all families have been relocated, and that each family will be offered “comparable housing.” The notice must also state that the PHA will pay for the actual and reasonable relocation expenses of each resident to be displaced, and provide any necessary relocation counseling for residents who are displaced.

“Comparable Housing” consists of housing that meets housing quality standards and that is located in an area that is generally not less desirable than the location of the housing of the person to be displaced. The housing may consist of tenant-based assistance, project-based assistance, or another public housing unit, so long as the rental rate is comparable to the rental rate of the unit from which the family is being displaced.

Section 18 provides that, prior to a disposition of all or a portion of a public housing project, “in appropriate circumstances” as determined by HUD, the PHA shall initially offer the property to any eligible resident organization, eligible resident management corporation, or nonprofit organization acting on behalf of the residents. In order to be eligible for such an offer, which would be to purchase the property for continued use as low-

income housing, the resident organization or other resident nonprofit entity must express an interest within 30 days after the PHA notifies the entity of the proposed disposition. If the entity expresses an interest in writing, the disposition cannot occur for 60 days, beginning on the date of receipt of the written notice, to give the entity time to obtain a firm commitment for financing the purchase. Formerly, the statute required the PHA to offer the property to residents in the case of both a proposed demolition or disposition.

Section 18 requires the number of units developed on the former site of a public housing project that was demolished pursuant to Section 18 to be “significantly fewer” than the number of units on the site prior to the demolition. (See 42 U.S.C. 1437p(d).) This requirement was actually first instituted in 1995. (See Section 1002(f) of the 1995 Rescissions Act (Pub. L. 104–19, approved July 27, 1995).) The statute does not specifically define what proportion or percentage constitutes “significantly fewer.”

Section 18 also allows for consolidation of occupancy within a building, among buildings, or between a project and other housing. The purpose of such consolidation must be to improve the living conditions of residents or to provide greater efficiency in serving the residents. (See 42 U.S.C. 1437p(e).)

Section 18 contains a so-called “*de minimis*” exception from the statute’s requirements. This provision allows a PHA to demolish the lesser of five units or five percent of the total number of dwelling units owned by the PHA in any five-year period, if the space occupied by the demolished unit or units is used for meeting the service or other needs of the residents or if the unit or units are beyond repair. The statute does not define what condition constitutes “beyond repair.”

In the case of disposition only, the law prior to QHWRA required that the net proceeds of the disposition be used to pay the development cost for the project or to retire any outstanding obligations issued to finance the project’s development or modernization. Section 18 now requires that the net proceeds of disposition be used to retire outstanding obligations issued to finance the original development or modernization. Section 18 also gives the Secretary the discretion to waive that repayment requirement. Any proceeds of disposition not used for debt are permitted to be used for broadly defined purposes: to provide low-income housing, to benefit the residents of the PHA, or to leverage amounts to secure

commercial enterprises, on site in public housing projects, appropriate to serve the needs of the PHA’s residents.

II. This Proposed Rule

A. Purpose, Applicability, and Definitions

This proposed rule would retain the following sections from the existing regulations with some adjustments and clarifications.

Proposed § 970.3(b), which sets forth transactions and situations to which this rule would not apply, would revise current § 970.2(a) (which discusses applicability) to address changes made by QHWRA as well as to clarify areas where questions about applicability have been raised in the past. For clarification purposes, a new § 970.3(b)(5) has been added and subsequent paragraphs redesignated, making clear that this rule does not apply to provision of space within a project for Family Self Sufficiency program purposes under 42 U.S.C. 1437u(j).

Another point of clarification would be made in proposed § 970.3(b)(8), which states that condemnations and eminent domain takings by state and local authorities are not covered. In order to qualify as an exempt taking or exercise of eminent domain authority, the taking body must be authorized to acquire real property by eminent domain under state law, and must show its intent to use its power of eminent domain by taking the first step necessary under state law for an eminent domain taking. HUD must be a party to any condemnation proceeding because of its interest under the ACC (Annual Contributions Contract, defined at 24 CFR 5.403) and Declaration of Trust. HUD approval is required of any out-of-court settlement for the transfer of PHA-owned property under eminent domain due to the federal interest in the property under the ACC, and as specified in the Declaration of Trust. Additional adjustments would be made to account for changes in law.

A reference to one-for-one replacement housing would be eliminated from § 970.2(a)(7) (this material is found in proposed § 970.3(b)(8)), because one-for-one replacement of units demolished or disposed of is no longer required.

The list of transactions to which the rule does not apply would be revised to include the new provision for *de minimis* demolitions under 42 U.S.C. 1437p(f) as well as demolitions of severely distressed public housing units as part of a HOPE VI revitalization plan approved after the effective date of

¹ See Sections 201(b) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996); 201(b) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, approved September 26, 1996); and 201(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997).

QHWRA, and demolition of public housing developments removed from a PHA's inventory under Section 33 of the 1937 Act, 42 U.S.C. 1437z-5. These matters are included in proposed §§ 970.3(b)(13), (14), and (15).

A definition would be added for housing construction cost (HCC) by cross-reference to reflect that this rule proposes using the concept of HCC to help PHAs determine whether there are any modifications that would be cost-effective to return a building to useful life under 42 U.S.C. 1437p(a)(1)(A)(ii). Section 970.15 of this proposed rule expresses cost-effectiveness as a percentage of HCC. The definition of HCC is found in 24 CFR 941.103 (67 FR 76102) and is cross-referenced in this proposed rule at § 970.5.

B. Section 970.7 General Requirements for a Demolition or Disposition Application

This proposed section clarifies that HUD funds may not be used to reimburse the PHA for the costs of a demolition or disposition undertaken without the necessary written approval from HUD. Proposed § 970.7(a)(1) states that HUD will not approve an application unless it contains a certification that the PHA's approved annual plan under 24 CFR part 903 includes a description of and the timetable for any demolition or disposition for which the PHA has applied or will apply for approval under Section 18 and these regulations (except in the case of small- or high-performing PHAs eligible for streamlined annual plan treatment). This description and timetable must be the same in the annual plan and the application, and otherwise comply with Section 18 of the 1937 Act and these regulations. The remainder of proposed 24 CFR 970.7(a) states various application requirements, including a description of the property to be demolished or disposed; a description of the specific action proposed, such as demolition, disposition, or a combination; a proposed timetable for the action; a statement supporting the proposed action under the regulatory criteria; a plan for the relocation of any tenants who would be displaced by the action; and other such information demonstrating that the proposed action is legally supportable and financially viable.

Approvals for the demolition or disposition of public housing units are for specific units, which cannot be substituted for other units. Furthermore, since the PHA is required to certify that specified conditions justify demolition or disposition, HUD must be able to rely

on the PHA certification as being consistent with available information or data. Since HUD will not approve a certification that it determines to be incorrect, or that is clearly inconsistent with information available to or requested by HUD, the PHA cannot substitute or add other units not covered by the application or approval. Rather, in such a case, proposed § 970.7(b)(3) states that the PHA must submit a new application. Under proposed § 970.7(b)(1), a PHA must complete its action within two years of the date of HUD approval. If a PHA decides it no longer wants to demolish or dispose of units that have been approved for demolition or disposition, it must submit a resolution of its Board of Commissioners and show that the conditions originally requiring demolition or disposition have changed (see proposed § 970.7(b)(2)).

C. Section 970.9 Resident Participation Consultation and Opportunity To Purchase

Consultation is an extremely important part of the process of applying for demolition or disposition of public housing. QHWRA requires (1) that the demolition or disposition application be developed in consultation with affected residents, any resident advisory board and resident council of the development that will be affected by the proposed demolition or disposition, and appropriate government officials, and (2), in the case of a proposed disposition, that eligible resident organizations must be given an opportunity for 30 days to indicate an interest in purchasing the development after they are notified of the sale.

This proposed rule would implement these consultation and participation requirements in 24 CFR 970.9. Elements of these requirements were found in the existing regulation at 24 CFR 970.4, 970.8, and 970.13. Proposed § 970.9, similar to § 970.8(e) of the existing regulation, requires that the PHA submit with the application a description of the consultations with the residents affected by the proposed demolition or disposition, each resident advisory board, and any resident councils of the project that will be affected by the proposed demolition or disposition. Like § 970.8(e) of the existing regulation, § 970.9 would also require that the PHA submit to HUD copies of any written comments submitted to the PHA and any evaluation the PHA has made of those comments.

At § 970.9(b), this rule proposes to implement the statutory requirement that a PHA seeking to dispose of a public housing development, in

appropriate circumstances, offer it first to a resident organization, resident management corporation, or nonprofit corporation acting on behalf of residents at the development involved in the action. Notably, since the statute now applies only the resident offer requirements to proposed disposition, and not demolition, the portions of current § 970.13(a) that involve offering to-be-demolished properties to the residents are not implemented in the proposed rule.

This proposed rule also varies from the existing regulation in that it would omit the provision at § 970.13(b) that, in cases where there is no resident organization, the PHA must inform the residents and give them a chance to organize. The reason for this change is two-fold. First of all, by this time most residents have had an opportunity to form resident organizations. Secondly, the procedure has proven overly time-consuming and unworkable in those few situations where there is not yet a resident organization.

As in the existing regulations, the proposed rule would provide for HUD discretion as to the circumstances in which such a resident offer is made, in that it is only required "in appropriate circumstances." (See proposed § 970.9(b)(1).) HUD would define the "appropriate circumstances." The cases that would not present appropriate circumstances for the offer include the same ones listed in current § 970.13(a)(2)(v) and (vi). (See proposed § 970.9(b)(3).) Other subsections defining "appropriate circumstances" in the current rule relate to demolitions, and so are omitted from the proposed rule. New circumstances in which a PHA will not make an offering to residents have been added at proposed § 970.9(b)(3) to take into account HOPE VI revitalization (see 42 U.S.C. 1437v), 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 Appropriations Act, Pub. Law 104-134, approved April 26, 1996), and the required conversion of distressed housing to tenant-based assistance under 42 U.S.C. 1437z-5.

If an offer is made, the proposed rule would require, in accordance with the statute, that the resident organization or entity express its interest within 30 days after receiving the notice from the PHA of the upcoming sale, and be given 60 days from the date the PHA receives the residents' expression of interest to submit a formal proposal to the PHA and to obtain firm commitments for the necessary financing. (See proposed

§§ 970.11(a)–(c.) Proposed § 970.11(d) contains the required contents of the initial written notice of sale. Proposed § 970.11(i) would detail the minimum contents of the tenant organization's formal purchase proposal, if any. Proposed § 970.11(g) would provide that the PHA has 60 days to review the resident purchase proposal, and, if the PHA determines that it meets the terms of sale, 14 days to notify the resident organization that the proposal has been accepted. If the PHA determines that the purchase offer differs from the terms of sale, the PHA has discretion to accept or reject the offer.

Proposed § 970.11(h) would provide for an appeal to HUD in cases where the resident organization's proposal to purchase is rejected. The proposed rule would revise the appeals process for disputes arising from the PHA's decision on residents' offers to purchase. The current appeals process has been workable because it has been rarely utilized. HUD believes that it may be inadequate if it becomes frequently used, and so proposes two major changes for public comment. One such change is that HUD will be able to extend the time to provide an initial decision from 30 days to 120 days, in 30-day increments. If there are few cases, HUD should have no problem meeting the 30-day time frame; however, this time frame could be unrealistic if HUD becomes overburdened with appeals. Secondly, the rule explicitly provides for administrative finality. HUD hopes that this will result in more efficient resolution of disputes at the administrative level, avoiding time-consuming and resource-intensive court litigation.

D. Criteria for Approval and Disapproval of Demolition or Disposition Applications (§§ 970.15, 970.17, and 970.29)

This proposed rule, in accordance with the statute, would place in the hands of PHAs much of the responsibility for determining whether a project is suitable for demolition or disposition. This rule at § 970.15(a) and § 970.17 proposes to implement the statutory standard by requiring HUD to approve the request based on the PHA's certification, unless HUD has information that the PHA's certification is incorrect. In the case of requested demolition, the PHA must certify that the development is physically obsolete and no reasonable program of modifications will be cost-effective to return the development to useful life. Section 970.15(b) indicates major problems that HUD would consider to

indicate obsolescence. In the case of requested disposition, the rule proposes that the PHA must certify either that (1) conditions in the area adversely affect the health or safety of the residents or the feasible operation of the project, (2) disposition will allow the development, rehabilitation, or acquisition of other property that will be more efficiently or effectively operated as public housing, or (3) that disposition is otherwise in the best interests of the residents and the PHA, consistent with the goals of the PHA and the PHA Plan, and otherwise consistent with the statute. Section 970.17(d) would also implement the statutory provision on disposition of non-dwelling facilities and vacant land.

The proposed rule would also indicate the permissible bases for HUD to disapprove an application for demolition or disposition. (See proposed § 970.29.) HUD would disapprove such an application if the information to which the PHA certifies is clearly inconsistent with information available to HUD. HUD's information for this purpose can, by statute, include information that HUD requests. (See 42 U.S.C. 1437p(b)(1).) As this statutory provision implies, HUD has discretion to request information. (See proposed 24 CFR 970.7, "general requirements for PHA demolition/disposition application for HUD approval.") The other statutory reason for disapproval is failure of the applicant to follow the statutory consultation process. (See 42 U.S.C. 1437p(b)(2).) (See proposed § 970.29(b).)

E. Environmental Review

The proposed environmental review requirements for demolition or disposition have been placed in a stand-alone section in this proposed rule, § 970.13. Environmental review requirements apply to all demolitions or dispositions under this part, including *de minimis* demolitions pursuant to § 970.27. The environmental review shall assess the impacts of known future site reuse. 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.

On the other hand, potential reuse of the site would not be considered to be

known, and thus no environmental review of the reuse would be required before the time of demolition or disposition, if the reuse is a use: (1) For which no private, federal, state, or local funds have been committed; and (2) which is not the subject of any grant application to the federal government or a state or a unit of local government; (3) which neither the federal government nor a state or a unit of local government has made a commitment to take an action to facilitate, including a physical action; and (4) which has not been delineated in any architectural, engineering, or design plans that go beyond a preliminary stage. Information about the reuse of the site should be sought from the transferee or other sources. In addition, in the case of a demolition or disposition made necessary by a declared natural disaster, this proposed rule references certain available expedited review procedures.

F. Relocation of Tenants

Proposed §§ 970.21 and 970.23 would implement the statutory provisions regarding relocation of residents of public housing who will be displaced by demolition or disposition. By statute, such residents must be offered comparable housing that meets housing quality standards (HQS) and is located in an area generally no less desirable than the location of the displaced person's housing. (See 42 U.S.C. 1437p(a)(4)(A)(iii).) If the relocated residents are persons with disabilities being displaced from units with reasonable accommodations, comparable housing includes housing with reasonable accommodations. Relocation housing may be in the form of tenant- or project-based Section 8 vouchers, or occupancy in another of the PHA's units at a rental rate that is comparable to the rental rate of the unit from which the resident was moved.

The statute provides that the PHA will pay for the actual and reasonable costs of relocation of each resident. (See 42 U.S.C. 1437p(a)(4)(B).) "Actual and reasonable costs of relocation" includes the costs of transporting and moving persons with disabilities, including any reasonable accommodations to their disabilities. This rule proposes that the PHA may pay those costs from a variety of sources, including HUD funds. (See proposed § 970.23.) Also, as required by the statute, the rule would require the PHA, except in emergency situations, to give notice to residents 90 days before the date of displacement, to provide relocation counseling, and to refrain from taking any action until all the residents of the affected building or buildings have been relocated. (See 42

U.S.C. 1437p(a)(4)(A), proposed 24 CFR 970.21(e).) In addition, the PHA must have a relocation plan indicating the number of residents to be displaced, the type of counseling services that the PHA will provide, the housing resources expected to be available for the residents, and the estimated costs of the relocation expenses and the counseling services, and the source of funds to pay those costs.

G. De minimis Exception

By statute, in any five-year period a PHA may demolish the lesser of five percent of its dwelling units or five of its dwelling units, if the space occupied by the units is used for meeting service or other needs of the public housing residents or the units are beyond repair. This statutory provision is proposed to be implemented in § 970.27. The rule would make clear that the five years are counted backward from the date of the new proposed demolition under this section, and that demolitions prior to the effective date of QHWRA will not be counted in the calculation. Environmental review provisions apply to demolitions pursuant to this section.

H. Actions With Respect to Units To Be Demolished or Sold, Prior to Application Approval

Where a PHA plans to demolish or sell units, but has either applied and not yet received approval or has not yet applied, an issue arises regarding the PHA's obligation to maintain those units in operating condition. Since the PHA continues to receive subsidy to operate those units, the PHA has an obligation to maintain and operate the units as housing for low-income families. This

proposed rule codifies this obligation at § 970.25. The PHA may conduct planning activities including studies and consultation regarding demolition, but must continue to provide full housing services to residents in place. While HUD is actually considering the application, if there is unit turnover, the PHA should not re-rent the units from which residents have moved. After approval of a PHA's demolition or disposition application, a PHA is required to operate all units as public housing and will receive operating subsidy in accordance with HUD's operating subsidy regulations at 24 CFR part 990.

I. Consolidation of Occupancy

A PHA may consolidate occupancy within or among buildings of a development in order to more efficiently serve the residents, without filing a demolition or disposition application. (See proposed § 970.25(b).)

J. Use of Proceeds of Disposition

This proposed rule would amend 24 CFR 970.19 to reflect the fact that QHWRA provides more flexibility than previously existed for use of the proceeds from disposition. After disposing of the property, either at fair market value by public solicitation or by another method approved by HUD, and paying approved costs of the disposition, the PHA may apply for a waiver by HUD of the obligation to use the proceeds from disposition for the retirement of debt obligations used to finance the original construction or for the subsequent modernization of the public housing development. To the extent that proceeds not used to pay off obligations remain, they can be used

either to provide low-income housing to benefit the residents of the public housing agency or to leverage funds to secure on-site commercial enterprises appropriate to serve the needs of the residents. (42 U.S.C. 1437p(a)(5)(B).)

III. Supplementary Information

Paperwork Reduction Act

This rule contains collection of information requirements, which have been submitted to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). These new collection of information requirements are not effective until such time that OMB grants its approval. The approval numbers will be published in the **Federal Register** through separate notice. Information on these requirements is provided as follows:

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

For demolition or disposition, the total estimated paperwork burden is 1321.25 hours. The information required in 24 CFR 970.7(a)(2), a description of the existing project, in each case is already contained in the electronic system into which the required information will be submitted, and so is not expected to impose any additional paperwork burden. Therefore, even though it is a regulatory requirement, that section is not listed herein.

The burden of information collection in this proposed rule is estimated as follows:

Section No. and procedure	Number of persons affected	Number of minutes per procedure	Burden hours
970.7(a)(1) HA plan certification	243	10	40.50
970.7(a)(2) Description of property	243	0	0
970.7(a)(3) Description of proposed action	243	15	60.75
970.7(a)(4) Timetable	243	5	20.25
970.7(a)(5) Justification	243	45	182.25
970.7(a)(6) Relocation plan, if needed	243	45	182.25
970.7(a)(7) Description of resident consultation	243	30	121.50
970.7(a)(10) Appraisal in the case of disposition	171	5	14.25
970.7(a)(11) Estimate of proceeds, use of proceeds in the case of disposition	171	30	85.50
970.7(a)(12) Estimate of costs for any required relocation housing, moving costs, and counseling	243	30	121.50
970.7(a)(13) Request to waive debt	171	5	14.25
970.7(a)(14) Board resolution	243	5	20.25
970.7(a)(15) Evidence of government consultation	243	5	20.25
970.7(a)(16) Environmental review	243	5	20.25
970.7(a)(17) FH&EO certification	243	5	20.25
970.9(a) Evidence of resident consultation & evaluation	243	60	243.00
970.9(b)(4) Evidence of nonapplicability to make the offer to sell to RO	171	10	28.50
970.11 (same information as 970.7(a)(8) Offer to sell (less than 25% of disposition applications do not take the exception)	43	60	43.00
970.27(e) De minimis recordkeeping submission	7	15	1.75

Section No. and procedure	Number of persons affected	Number of minutes per procedure	Burden hours
970.35 Required reports	243	20	81.00
Total Reporting and Recordkeeping Burden (hours)			1321.25

¹ From PIC.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within 30 days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4598-P-01) and must be sent to:

Mark D. Menchik, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395-6947, e-mail: Mark_D_Menchik@omb.eop.gov; and

Sherry Fobear-McCown, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9116, Washington, DC 20410.

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 proposed 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 has been made 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 finding of no significant impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

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 proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed 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). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

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 proposed rule is 14.850.

For the reasons stated in the preamble, HUD proposes to amend 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 rules and procedures 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 end of the initial operating period

(EIOP), as determined under the ACC, of property acquired incident to the development of a public housing project (however, this exception shall not apply to dwelling units 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, the homeownership program under former Section 5(h) of the Act, 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 supportive services incident to an approved local Family Self Sufficiency program under 24 CFR part 984;

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

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

(12) Disposition of public housing units after DOFA 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.

EIOP means the end of the initial operating period. If 95 percent or more of the units in a development are occupied, EIOP is the last day of the first calendar quarter after DOFA. If the development does not achieve 95 percent occupancy by this date, EIOP is the last day of the second calendar quarter after DOFA.

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 which 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.

Housing Construction Cost (HCC) has the same meaning as in § 941.103 of this title.

PHA Plan—Means the PHA's initial, annual, and five-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.

§ 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 approved 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 approved 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 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, the estimated balance of project debt, under the ACC, for development and modernization;

(10) 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);

(11) 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;

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

(13) 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;

(14) 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 Commissioners' 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;

(15) 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 which 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;

(16) 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;

(17) 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;

(18) 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) A PHA must complete any approved demolition or disposition within two years of the date of HUD's approval.

(2) 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 documentation that the conditions that originally led to the request for demolition or disposition have significantly changed or been removed.

(3) 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, or other types of low-income housing);

(iii) Units that have been legally vacated in accordance with 24 CFR part 970 (HOPE VI) or 24 CFR part 971 (Section 202 Mandatory Conversion), excluding developments where the PHA has consolidated vacancies;

(iv) Distressed units required to be converted to tenant-based assistance under 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 (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 establish 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 materials to the residents no later than 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 in 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 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 which 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), 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 six 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 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, 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 § 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.

(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 PHA's certification is clearly inconsistent with information or data available to HUD or requested by HUD:

(1) In the case of demolition of all or a portion of a development, the development, or portion of the

development, is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and

(2) No reasonable program of modifications is cost-effective to return the development or portion of the development to useful life. HUD generally shall not consider a program of modifications to be cost-effective if the costs of such program exceed the HCC in effect at the time the application is submitted to HUD.

(b) Major problems indicative of obsolescence are:

(1) 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);

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

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

(c) In the case of demolition of only a portion of a development, the demolition will help to ensure the viability of the remaining portion of the project (to reduce development density to permit better access by emergency, fire, or rescue services, or to 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 EIOP); 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 by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be in the best interests of the PHA or the federal government, or 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; and

(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 CDBG funds (see 24 CFR part 570) are used to pay any part of the cost of the demolition or the cost of a project for which the property is acquired, the transaction is subject to the Residential Anti-Displacement and Relocation Assistance Plan, as described in the applicable regulations.

(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, 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 lower 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) Five percent of the total dwelling units owned by the PHA over any five-year period.

(b) The five-year period referred to in paragraph (a)(2) of this section is the five years counting backwards 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 five 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 five 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 five percent of its total.

(c)(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, 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. Beyond repair means physical improvement or rehabilitation costs which exceed the computed HCC for a new development with the same structure type and number and size of units in the market area.

(d) The environmental review requirements at § 970.13 shall apply to demolitions under this section.

(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 of an application if HUD determines that:

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

(1) The approved 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 and 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.

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;

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

(b) [Reserved]

Dated: December 6, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04-27206 Filed 12-14-04; 8:45 am]

BILLING CODE 4210-33-P