

§ 969.107

set forth in 24 CFR part 970 (HUD's regulation in demolition or disposition of public housing).

§ 969.107 HUD approval of demolition or disposition before ACC expiration.

This part is not intended to preclude or restrict the demolition or disposition of a project pursuant to HUD approval in accordance with 24 CFR part 970. Subject to the requirements of 24 CFR part 970, HUD may authorize a PHA to demolish or dispose of public housing at any time before the ACC Expiration Date.

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

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

SOURCE: 50 FR 50894, Dec. 13, 1985, unless otherwise noted.

§ 970.1 Purpose.

This part sets forth requirements for HUD approval of a public housing agency's application for demolition or disposition (in whole or in part) of public housing projects assisted under Title I of the U.S. Housing Act of 1937 (the "Act"). The rules and procedures con-

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tained in 24 CFR part 85 are inapplicable.

[53 FR 8067, Mar. 11, 1988, as amended at 56 FR 923, Jan. 9, 1991]

§ 970.2 Applicability.

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

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

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

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

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

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

the status of unit from dwelling to nondwelling.);

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

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

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

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

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

(11) A public housing development that is conveyed by a PHA to an owner entity pursuant to an approved proposal under 24 CFR part 941, subpart F and prior to the determination of the Actual Development Cost to enable an owner entity to develop the project using the mixed-finance development method; and

(12) Public housing units that are developed pursuant to the mixed-finance development method at 24 CFR part

941, subpart F, and that are reconveyed by the owner entity to the PHA.

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

[60 FR 3716, Jan. 18, 1995; as amended at 61 FR 19719, May 2, 1996]

§ 970.3 Definitions.

Act means the United States Housing Act of 1937.

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 razing, in whole or in part, of one or more permanent buildings of a public housing project.

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 project, subject to the exceptions stated in § 970.2.

[50 FR 50894, Dec. 13, 1985, as amended at 60 FR 3716, Jan. 18, 1995]

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

HUD will not approve an application for demolition or disposition unless:

(a) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any PHA-wide tenant organizations that will be affected by the demolition or disposition;

(b) Demolition or disposition (including any related replacement housing plan) will meet the requirements of the

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

National Environmental Policy Act of 1969 (42 U.S.C. 4321), the National Historic Preservation Act of 1966 (16 U.S.C. 469), and related laws, as stated in the Department's regulations at 24 CFR part 50.

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

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

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

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

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

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

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

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

[50 FR 50894, Dec. 13, 1985, as amended at 53 FR 30987, Aug. 17, 1988; 60 FR 3717, Jan. 18, 1995]

§ 970.5 Displacement and relocation.

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

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

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

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

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

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

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

(2) Other advisory services, as appropriate, including counseling and referrals to suitable, decent, safe, and sanitary replacement housing. Minority persons also shall be given, if possible, referrals to suitable decent, safe and sanitary replacement dwellings that are not located in an area of minority concentration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Any person who moves permanently, including a person who moves

before the date of HUD approval of the demolition or disposition, if HUD or the PHA determines that the displacement resulted from the demolition or disposition of the property and is subject to the provisions of this section; or

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

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

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

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

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

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

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

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

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other

good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

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

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

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

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

(k) *Definition of initiation of negotiations.* For purposes of providing the appropriate notices and determining the formula for computing a replacement housing payment under the URA to a tenant displaced from a dwelling as a direct result of demolition or private owner acquisition, the term "initiation of negotiations" means HUD approval of the demolition or disposition under this part.

[60 FR 3717, Jan. 18, 1995]

§ 970.6 Specific criteria for HUD approval of demolition requests.

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

(a) In the case of demolition of all or a portion of a project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes *and* no reasonable program of modifications, is feasible to return the

project or portion of the project to useful life. The Department generally shall not consider a program of modifications to be reasonable if the costs of such program exceed 90 percent of total development cost (TDC). Major problems indicative of obsolescence are—

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

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

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

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

[60 FR 3719, Jan. 18, 1995]

§ 970.7 Specific criteria for HUD approval of disposition requests.

(a) In addition to other applicable requirements of this part, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the PHA because at least one of the following criteria is met:

(1) Developmental changes in the area surrounding the project (e.g., 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.

(2) Disposition will allow the acquisition, development, or rehabilitation of

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

(3) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the PHA and that are not inconsistent with other provisions of the Act. As an example, if the property meets any of the criteria for demolition under § 970.6, it may be disposed of under this criterion (§ 970.7(a)(3)), subject to conditions that HUD may impose (e.g., demolition to follow disposition in order to assure abatement of a threat to safety or health).

(b) In the case of disposition of property other than dwelling units, (1) the property is determined by HUD to be excess to the needs of the project (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 project.

[50 FR 50894, Dec. 13, 1985, as amended at 53 FR 30988, Aug. 17, 1988; 60 FR 3719, Jan. 18, 1995]

§ 970.8 PHA application for HUD approval.

Written approval by HUD shall be required before the PHA may undertake any transaction involving demolition or disposition. To request approval, the PHA shall submit an application to the appropriate HUD Field Office which includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed demolition or disposition under one or more of the applicable criteria of § 970.6 or § 970.7;

(d) If applicable, a plan for the relocation of tenants who would be displaced by the proposed demolition or

disposition (see § 970.5). The relocation plan must at least indicate:

(1) The number of tenants to be displaced;

(2) What counseling and advisory services the PHA plans to provide;

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

(4) An estimate of the costs for counseling and advisory services and tenant moving expenses, and the expected source for payment of these costs (see §§ 970.9); and

(5) The minimum official notice that the PHA will give tenants before they are required to move;

(e) A description of the PHA's consultations with tenants and any tenant organizations (as required under § 970.4(a)), with copies of any written comments which may have been submitted to the PHA and the PHA's evaluation of the comments;

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

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

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

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

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

(k) The estimated balance of project debt, under the ACC, for development and modernization;

(l) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal unless, as determined by HUD, (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;

(m) 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 §970.9;

(n) A copy of a resolution by the PHA's Board of Commissioners approving the application;

(o) If determined to be necessary by HUD, an opinion by the PHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, and local laws; and

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

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

[50 FR 50894, Dec. 13, 1985, as amended at 60 FR 3719, Jan. 18, 1995]

§970.9 Disposition of property; use of proceeds.

(a) Where HUD approves the disposition of real property of a project, in whole or in part, the PHA shall dispose of it 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. Reasonable costs of disposition, and of relocation of displaced tenants allowable under §970.5, may be paid by the PHA out of the gross proceeds, as approved by HUD.

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

(1) For the retirement of outstanding obligations, if any, issued to finance

original development or modernization of the project; and

(2) Thereafter, to the extent that any net proceeds remain, for the provision of housing assistance for low-income families, through such measures as modernization of low-income housing or the acquisition, development or rehabilitation of other properties to operate as low-income housing.

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

[50 FR 50894, Dec. 13, 1985, as amended at 53 FR 30988, Aug. 17, 1988; 60 FR 3719, Jan. 18, 1995]

§970.10 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 modernization program under the Comprehensive Improvement Assistance Program (24 CFR part 968), the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§970.11 Replacement housing plan.

(a) *One-for-one replacement.* HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits

a plan for the provision of an additional decent, safe, sanitary, and affordable rental dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application, except as provided in paragraph (j) of this section. A replacement housing plan may provide for the location of the replacement housing outside the political boundaries of the locality of the PHA, provided all relevant program requirements are satisfied including the approval of the replacement housing plan by the unit of general local government in which the project being demolished or disposed is located. In order to assure that all program requirements are satisfied, the PHA must enter into any necessary agreements, including where applicable, the execution of a Cooperation Agreement between the PHA and the locality in which the replacement housing will be located, prior to submission of the replacement housing plan to HUD for approval. In addition, the PHA must ensure that such agreements provide that the families selected for occupancy in the replacement housing will be families who would have been eligible for occupancy in the replacement housing if it had been replaced in the same locality as the project being demolished or disposed. The plan must include any one or combination of the following:

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

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

(3) The use of not less than 15-year project-based assistance under other Federal programs, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under other Federal

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

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

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

(ii) However, in the case of an application proposing demolition or disposition of 200 or more units, not less than 50 percent of the dwelling units for replacement housing shall be provided

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

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

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

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

served by the assistance; an assessment of compliance with civil rights laws and related program requirements; and such additional data as HUD may determine to be relevant in particular circumstances; and

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

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

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

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

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

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

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

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

and neighborhood standards, as follows:

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

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

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

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

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

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

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

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

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

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[60 FR 3719, Jan. 18, 1995]

§970.12 Required and permitted actions prior to approval.

A PHA may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval under this part. Until such time as HUD approval may be obtained, the PHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families. This does not, however, mean that HUD approval under this part is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning or comprehensive occupancy planning.

[53 FR 30987, Aug. 17, 1988]

§970.13 Resident organization opportunity to purchase.

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

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

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

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

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

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

(v) A public body has requested to acquire vacant land that is less than 2 acres in order to build or expand its

services (e.g., a local government wishes to use the land to build or establish a police substation); or

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

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

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

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

(b) *Opportunity for residents to organize.* Where the affected development does not have an existing resident council, resident management corporation or resident cooperative at the time of the PHA proposal to demolish or dispose of the development or a portion of the development, the PHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of "reasonable effort" at a minimum include one of the following activities: convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide

technical assistance to the residents. The Department will not approve any application that cannot demonstrate that the PHA has allowed at least 45 days for the residents to organize a resident organization. The PHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under § 970.4(a).

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

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

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

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

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

(iv) An identification of available resources (including its own and HUD's) to provide technical assistance to the resident management corporation,

resident council or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use.

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

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

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

the PHA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the terms of sale, the PHA shall chose the best proposal.

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

(e) *PHA Review of Proposals.* The PHA has up to 60 days from the date of receipt of the proposal(s) to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the PHA may consider accepting the offer. If the terms of sale are met, within 14 days of the PHA's final decision, the PHA shall notify the resident management corporation, resident council or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

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

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

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

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

(iii) A statement of financial capability;

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

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

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

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

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

(ix) Estimated time schedule for completing the transaction;

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

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

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

(2) If the proposal is to purchase the property for homeownership under 5(h) or HOPE 1, then the requirements of Section 18 of the United States Housing Act of 1937 and 24 CFR part 970 do not apply, but the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 57 FR 1522, or the section 5(h) regulation, as set forth in parts 905 and 906 of this chapter. In order for a PHA to consider a proposal to purchase under section 412, using

homeownership opportunities under section 5(h) or HOPE 1, the resident council, resident management corporation or resident cooperative of the affected development shall meet the provisions of this rule, including paragraphs (g)(1)(i) through (g)(1)(xii) of this section.

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

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

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

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

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

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

their opportunity to purchase under this section. This documentation shall include:

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

(ii) The responses from each organization.

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

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

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

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

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

(B) A certification from the executive director or board of commissioners

of the PHA that the thirty (30) day timeframe has expired and no response was received to its offer.

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[60 FR 3721, Jan. 18, 1995]

§970.14 Reports and records.

(a) After HUD approval of demolition or disposition of all or part of a project, the PHA shall keep the appropriate HUD Field Office informed of significant actions in carrying out the demolition or disposition, including any significant delays or other problems. When demolition or disposition is completed, the PHA shall submit to the Field Office a report confirming such action, certifying compliance with all applicable requirements of Federal law and regulations and, in the case of disposition, accounting for the proceeds and costs of disposition.

(b) The PHA shall be responsible for keeping records of its HUD-approved demolition or disposition sufficient for audit by HUD to determine the PHA's compliance applicable requirements of Federal law and this part.

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

Sec.

971.1 Purpose.

971.3 Standards for identifying developments.

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971.11 Hope VI developments.

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

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