



This document is scheduled to be published in the Federal Register on 10/16/2014 and available online at <http://federalregister.gov/a/2014-24068>, and on [FDsys.gov](http://FDsys.gov)

**Billing Code 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 970 and 972**

**[Docket No. FR-5399-P-01]  
RIN 2577-AC82**

**Public Housing Program: Demolition or Disposition of Public Housing Projects,  
and Conversion of Public Housing to Tenant-Based Assistance**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise and update HUD's regulations governing the demolition and disposition of public housing. Currently, demolitions and dispositions are approved based on certification by a public housing agency (PHA) that certain conditions are met. This rule increases the oversight of demolition and disposition of public housing by requiring PHAs to submit more detailed justifications supporting such certifications, and specifying the requirements concerning the use of disposition proceeds, and other matters. The rule would also clarify and provide more detail related to existing requirements applicable to demolition and disposition such as resident relocation, and fair housing and civil rights compliance to ensure that PHAs properly abide by such requirements. The rule proposes to allow a PHA to request HUD permission to retain public housing property free of restrictions under the declaration of trust and annual contributions contract. In addition, the rule would update regulatory provisions to conform to certain requirements under the Housing and Economic Recovery Act of 2008, and clarify the definition of "conversion" in HUD's conversion of public housing regulations.

**DATES:** Comment Due Date: **December 15, 2014.**

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD

Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Szybist, Program Analyst, Special Applications Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 121 S. Main Street, Suite 300, Providence, RI 02903; telephone number 401-277-8310 (this is not a toll-free number); email [kathleen.a.szybist@hud.gov](mailto:kathleen.a.szybist@hud.gov). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

#### **A. Purpose of Regulatory Action**

Need for regulation. HUD last updated its demolition and disposition regulations in 24 CFR part 970 in 2006 (71 FR 62362, October 24, 2006). This regulation is necessary in order to update HUD's regulations in accordance with the Housing and Economic Recovery Act of 2008 (Public Law 110-289, approved July 30, 2008) (HERA), which made certain changes to the requirements applicable to qualified PHAs, which are non-troubled PHAs whose public housing and Section 8 units combined are fewer than 550 units. Such PHAs are relieved from annual plan filing requirements, and consequently from demolition and disposition requirements that involve the annual plan. In addition, this regulation is necessary to add clarifications and requirements related to resident consultation, application processing, and other requirements that

have until now been placed in notices to PHAs. This regulation would provide the requirements applicable to real property transactions and retention of projects by PHAs, a topic which HUD has addressed in practice under 24 CFR part 85 but which until now has not had specific regulatory standards. Finally, this regulation makes a needed clarification to HUD's regulations at 24 CFR part 972, which govern the conversion of public housing assistance to tenant-based assistance (conversion regulations).

How this rule would meet the need. This rule would promulgate the HERA-related changes and the needed clarifications to the demolition and disposition regulations, would substantially clarify the existing regulations, and correct HUD's conversion regulations.

Legal authority for the regulation. HUD has general authority to make such rules and regulations as needed to carry out its functions, powers, and duties under 42 U.S.C. 3535(d). In addition, HUD has specific authority over the demolition and disposition of public housing under 42 U.S.C. 1437p. HUD has authority over conversion of assistance under 42 U.S.C. 1437t and 1437z-5.

## **B. Summary of the Major Provisions**

The rule would divide HUD's 24 CFR part 970 into two subparts. Subpart A would comprise the current regulations applicable to demolitions and dispositions of public housing projects as provided under section 18 of the 1937 Act. Subpart B would provide the requirements applicable to real property transactions and retention of projects by PHAs. Additionally, this rule would issue a clarification to 24 CFR part 972 on conversion of assistance.

### *Subpart A*

Rules regarding leasing of the project and reconfiguration of interior space would be tightened to address abuses that have occurred. Currently, 24 CFR 970.3(b)(10) does not limit the purposes for which a lease may be entered into. In order to clarify that leases should not be entered into to avoid obligations under the Annual Contributions Contract (ACC), this proposed rule would clarify this exception to indicate these leases should only be entered into for the limited purposes of allowing an owner-entity to show site control. Thus, the rule at §970.3(b)(7), would permit, as an exception, the leasing of the entire project only for one year or less for the strictly limited purpose of allowing a prospective owner-entity to show site control in an application for funding for the redevelopment of the project. The rule would clarify that reconfiguration as an exception to demolition may only be done for an authorized use related to the normal operation of public housing and without demolition, as permitted by the ACC.

The material on de minimis demolition, which is allowed by statute, would be revised to ensure that HUD receives a notice of the proposed action before it takes place and ensures that the statutory requirements are being met prior to the action.

Generally, under the currently codified rule and this proposed rule, PHA property must be disposed of for fair market value (FMV). While the current rule, as an exception to the requirement that PHA property generally must be disposed for FMV, allows for the disposition of public housing for less than FMV if there is a commensurate public benefit to the community, the PHA, or the Federal Government, there are no further requirements ensuring that commensurate benefit is actually obtained. The proposed rule would add informational requirements to ensure that commensurate public benefit is actually being obtained for these types of dispositions. The information required would include anticipated future use of the

property, a detailed description of any housing to be located on the property, the length of time the future use would be maintained, and other pertinent information.

The rule would strengthen the application and resident consultation requirements. Regarding application requirements, the rule would enhance the information provided with the application to ensure that HUD has enough information regarding the action to make sure the PHA's supporting certifications are correct so that HUD makes the appropriate decision. Demolition requests would (as the statute requires), be granted unless HUD has or obtains information contrary to the supporting certification of the PHA, or the application was not developed in consultation with the affected residents and appropriate local government officials.

Regarding resident consultation, the proposed rule would provide more specificity to the resident consultation requirements to give PHAs better guidance and to ensure that resident consultation is as effective as possible. The rule would require the supporting evidence to include a description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; and any certifications or other written documentation that the PHA receives from the resident advisory board (RAB) and resident council regarding resident support or opposition.

Regarding the relocation of residents made necessary by demolition or disposition, the rule would continue to incorporate the requirement that the housing being offered must meet Housing Quality Standards (HQS) (or such successor standard that HUD may adopt) and be in a location "not less desirable" than the housing the resident is being displaced from. However, the currently codified regulation does not define a "not less desirable" location. The proposed rule

would define the “not less desirable” location, within the definition of “comparable housing,” as not less desirable than the original neighborhood in terms of access to public transportation, employment, education, service, child care, medical services, shopping, recreational, and other amenities, considered in the aggregate (such that, for example, a large increase with respect to shopping and employment would outweigh a small deficit as to recreation).

The proposed rule would also strengthen the notice to be provided to residents who would be relocated. The written notice would have to include a statement that the demolition, disposition, or combined application has been approved and that the action will occur, and a description of the process to relocate the residents. The written notice must be provided through an effective means of communication to persons with disabilities in accordance with 24 CFR 8.6 and in the appropriate non-English language or languages to persons with limited English proficiency as needed. The rule would specify that the notice must include a description of the (statutorily required) housing counseling services that will be available, including mobility counseling, and how a resident may access those services. The timing of the notice to residents would be specified as at least 90 days prior to the displacement date, except in cases of imminent threat to health and safety, but not before HUD has approved the application.

The rule would codify HUD’s practice of allowing for timely demolitions made necessary by natural disasters and accidents to ensure the health and safety of residents. In such a case, if the PHA rebuilds the same number of dwelling units or non-dwelling structures that comprised the demolished project, the demolition (and any additional demolition required to carry out the redevelopment) shall not be subject to 24 CFR part 970. If the PHA rebuilds less than all of the demolished structures or the project, the PHA shall submit a demolition

application under this part within one year of such demolition to formalize and request official HUD approval for the action under this part.

There has been increased frequency of dispositions that remove all of the housing and other property in a PHA's inventory. To clarify the PHA's obligations in this situation, a section would be added to require that once the action is complete and the PHA has no plans to develop any additional units, the PHA shall not expend any remaining Operating Funds, including operating reserves, other than for purposes related to the close-out of its public housing inventory, including audit requirements required by this section. Any remaining Operating Funds (including operating reserves and any unspent asset-repositioning fees received pursuant to 24 CFR 990.190(h)) would be required to be returned to HUD within 90 days of the date of removal of the project. The PHA may spend no more of its Capital Funds other than, with HUD approval, amounts required to close out contract obligations incurred prior to HUD's approval of the action.

The proposed rule would add civil rights requirements, including documentation that the PHA is not in violation of any civil rights law, compliance agreement, settlement agreement, or court order. Certifications would be required that the action will not violate any such law, settlement, order or other nondiscrimination requirements, and does not serve to maintain or increase segregation based on race, ethnicity, or disability. The rule would require a description of the civil rights-related characteristics (including race, color, religion, sex, national origin, familial status, and disability) of both the residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and of the residents on the PHA's waiting list (by bedroom size). The purpose of



these requirements is to ensure that PHAs that request demolition or disposition are not in violation of any civil rights-related laws, agreements, or orders.

Finally, the rule would revise currently codified § 970.35, “Reports and records” to strengthen HUD’s oversight and monitoring of demolition and disposition actions.

### *Subpart B*

The proposed rule would add a subpart B to 24 CFR part 970, to allow PHAs and other owners of public housing to retain public housing property, including dwelling units, without the use restrictions under the ACC and Declaration of Trust (DOT). Section 18 does not apply to cases where a PHA retains property, rather than disposing of it to another party.

### *Part 972 -- Conversion of assistance*

HUD is also proposing to revise the definition of “conversion” in the part 972 regulations that cover both voluntary and required conversion of public housing to tenant-based assistance to more accurately reflect what “conversion” means in the relevant statutory sections (for voluntary conversion, section 22 of the 1937 Act (42 U.S.C. 1437t); for required conversion, section 33 of the 1937 Act (42 U.S.C. 1437z-5). Currently, the regulations at 24 CFR 972.103 and 972.203 (for voluntary and required conversion, respectively), define conversion as the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the PHA. While it is true that under the statutes the residents of a project undergoing conversion may be provided with alternate housing including project-based assistance, the statute provides that the conversion is only from

public housing to tenant-based assistance. Therefore, HUD is proposing to revise these definitions accordingly to remove the reference to project-based assistance.

### **C. Costs, Benefits, and Transfers**

#### Costs and benefits:

The inception of this proposed rule does not come from a perceived market failure, but rather, from the desire to strengthen and streamline the demolition and disposition processes to reflect changes that have occurred in the public housing program over the last 20 years. As such, while this proposed rule would marginally increase the administrative burden, it would provide greater clarity regarding the demolition and disposition process.

The rule adds increased clarity and guidance to assist PHAs in determining when a demolition and/or disposition may be appropriate for their public housing inventories (e.g., so a PHA would be less likely to put the time into preparing and submitting an application to HUD that would not meet the criteria necessary for HUD approval and thus would not waste its or HUD's staff time and resources. Based on the clarified and new guidance in the rule, some PHAs may sometimes opt not to apply for demolition/disposition and instead pursue other HUD tools—e.g., CFFP financing—for their public housing stock);

The rule adds increased clarity and guidance on what HUD will require to approve an application submitted by a PHA (e.g., HUD will re-do the paperwork burden—HUD form—to make the application easier to fill out by PHAs). Applications submitted by PHAs will be more likely to be approved by HUD because PHAs will be better able to show they are meeting the applicable HUD criteria. Further, HUD's review time will likely be significantly reduced, a benefit to both PHAs and HUD.

On average, HUD's special application center (SAC) estimates that the total additional administrative burden as a result of this rule is 162 hours per application per year. Each year, the center receives between 150 and 200 applications for demolition and or disposition. If HUD assumes that the average hourly rate is \$200, the total compliance cost would be between \$4.86 million and \$6.48 million a year. For example, the proposed rule would require that the determination of obsolescence be found by an independent architect or engineer that is not a regular employee of the PHA (§ 970.15(a)(2)).

In addition, units that are demolished or disposed of do not receive full funding under the public housing operating and capital funds. Under the public housing program, these units receive a proration and under the capital funds, they receive replacement housing factor funds. Funds retained under the capital fund program are redistributed to PHAs (including the applying PHA) by formula. The same units removed from the inventory and the PHA will no longer receive operating funds for those units, but the PHA will also not have any operating or maintenance expenses for those units.

The proposed rule would create very little additional financial flux. It is likely that the proposed rule may generate up to \$2.23 million in additional compliance costs. These costs would constitute transfers to architects, engineers, lawyers, accountants, etc. For example, the proposed rule requires that the determination of obsolescence be found by an independent (that is not a regular employee of the PHA) architect or engineer.

## **II. Background**

The Quality Housing and Work Responsibility Act of 1998 (Public Law 105-276, approved October 21, 1998) (QHWRA) made extensive amendments to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (1937 Act) for the purpose of reforming and

improving HUD's public housing and tenant-based Section 8 housing assistance programs. Prior to QHWRA, HUD had to make specific findings regarding the obsolescence and the cost of rehabilitation of public housing, prior to approving any demolition or disposition of public housing. At that time, the Nation's public housing supply had a large stock of dilapidated and unusable housing. QHWRA, among other things, amended section 18 of the 1937 Act (42 U.S.C. 1437p) to allow for demolition if the PHA requesting demolition certifies to HUD that: (1) the project or portion of the public housing project 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 public housing project or portion of the project to useful life.

The 1937 Act provides that, in the case of partial demolition, the PHA must certify that the demolition will help to ensure the viability of the remaining portion of the project. In the case of disposition by sale or transfer, the PHA must certify that: (1) conditions in the area surrounding the project adversely affect the health or safety of the residents or the feasible operation of the project by the PHA; or (2) disposition allows the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as low-income housing. The PHA may also certify that the disposition is appropriate for other reasons, as long as those reasons are in the best interests of the residents and the PHA; consistent with the goals of the PHA as set forth in the PHA plan; and otherwise consistent with the goals of the 1937 Act. In the case of both demolition and disposition, the 1937 Act contains specific requirements to which the PHA must certify for notice to residents residing in the project 90 days prior to the action. Residents to be displaced, by statute, must be offered replacement housing, which may include tenant-based or project-based vouchers in addition to other public housing.

There are several other statutory requirements governing demolition and disposition of public housing that relate to the following: resident and local government consultation; the PHA planning process; relocation rights of residents; the use of the proceeds that result from disposition; residents' opportunity to purchase the property subject to disposition in the case of a proposed disposition; consolidation of occupancy; demolition of a minimum number of units under an exception to many of the requirements of the statute (*de minimis* demolition); and the non-applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.*) (URA) to demolition and disposition (section 18(g) of the 1937 Act (42 U.S.C. 1437p(g)) (although displaced residents have specific rights to be relocated, and the PHA specific relocation responsibilities, including payment of the actual and reasonable relocation expenses of residents being displaced, section 18(a)(4)(B) of the 1937 Act (42 U.S.C. 1437p(a)(4)(B))).

In accordance with section 18(a) of the 1937 Act (42 U.S.C. 1437p(a)), HUD approves a demolition or disposition application from a PHA as long as the proper certification is made and the specified requirements are met. The only statutory exceptions to this requirement are: (1) that the PHA's certifications pertaining to the demolition or disposition are inconsistent with information and data that is made available to HUD or that is requested by HUD; and (2) the PHA did not comply with the resident and local government consultation process. Under exception (1) HUD has the statutory right to request "information and data" regarding the proposed action in order to ascertain whether the PHA's certifications do in fact comport with the facts (see section 18(b)(1) of the 1937 Act (42 U.S.C. 1437p(b)(1))).

### **III. This Proposed Rule**

HUD's demolition and disposition regulations (24 CFR part 970), were promulgated by a final rule published on October 24, 2006, at 71 FR 62362, and no significant changes to the regulations have been made since that date.<sup>1</sup> The Housing and Economic Recovery Act of 2008 (Public Law 110-289, approved July 30, 2008) (HERA) made certain changes to the requirements applicable to qualified PHAs, as this term was defined by section 2702 of HERA, and these changes therefore require certain corresponding changes to HUD's demolition and disposition regulations. However, as recent notices issued by HUD's Office of Public and Indian Housing (PIH) reflect, HUD has clarified, through such notices, existing regulatory requirements applicable to demolition and disposition, such as resident consultation, application processing, and PHA Plan requirements because the regulations did not provide the details that PHAs needed to execute the requirements as contemplated by law.<sup>2</sup> Therefore, as more fully discussed below, this proposed rule revises HUD's demolition and disposition regulations to add the details and further clarify certain requirements as presented in recent notices issued by PIH.

### **Proposed Organization of Part 970**

This rule proposes to divide HUD's regulations on demolition and disposition in 24 CFR part 970 into two subparts. Subpart A would comprise, with revisions, the current regulations applicable to demolitions and dispositions of public housing projects as provided under section 18 of the 1937 Act. Subpart B would provide the requirements applicable to real property transactions and retention of projects by PHAs, to which 24 CFR part 85, which provides the administrative requirements for grants and cooperative agreements to state, local, and federally

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<sup>1</sup> Certain technical corrections were made to the regulations by a January 23, 2008, final rule published at 73 FR 3868.

<sup>2</sup> See Notice PIH 2012-7, issued February 2, 2012, pertaining to demolition/disposition of public housing and associated requirements; Notice PIH-2011-18, issued April 12, 2011, providing guidance on re-occupying public housing units proposed or approved for demolition, disposition, or transition to homeownership; Notice PIH-2008-17, providing guidance in the disposition of certain public housing assets.

recognized Indian tribal governments, would apply. Part 85 does not apply to subpart A, as subpart A is issued pursuant to a superseding statutory authority, 42 U.S.C. 1437p. This non-applicability is consistent with 24 CFR 85.31(b), which provides an exception to part 85 for real property pursuant to Federal statutes.

#### **A. Purpose and Applicability (Subpart A)**

Purpose (§ 970.1). Section 970.1, which addresses the purpose of the part 970 regulations, would be revised to reflect the new structure of the regulations.

Applicability (§ 970.3). The applicability of subpart A, as stated in § 970.3, would be revised to reflect changes to the applicability of the regulations. A new § 970.3(b)(1) would exempt from applicability, of the part 970 regulations, those public housing projects that PHAs apply to retain under subpart B of this rule. The current § 970.3(b)(1), which exempts PHA-owned section 8 housing, or housing leased under former sections 10(c) or 23 of the 1937 Act, would be redesignated as § 970.3(b)(2), and the current § 970.3(b)(2), which exempts demolition or disposition before the date of funding availability (DOFA) of property acquired incident to the development of a public housing project, would be redesignated at § 970.3(b)(3). The conveyance exception for providing homeownership opportunities under § 970.3(b)(3) would be redesignated as § 970.3(b)(4) and revised to clarify that this homeownership exception applies to certain specified homeownership opportunities for low-income families. In addition, the references to specific homeownership programs would be updated to reflect new homeownership programs since the regulations were promulgated in 2006. Discontinued programs like the section 5(h) homeownership program (section 5(h) of the 1937 Act (42 U.S.C. 1437c(h))) would remain referenced in this section to reflect the continued applicability of the part 970 regulations to any units that remain to be administered under these discontinued programs.

The exception for the leasing of non-dwelling space incidental to the operation of the PHA is updated and clarified in proposed § 970.3(b)(5). Agreements with third parties in the form of leases or license agreements, only insofar as they are for authorized non-dwelling purposes related to public housing, are permitted, provided that such an agreement benefits the PHA and its residents; is consistent with the PHA's plan, as determined by HUD; is consistent with the PHA's annual contributions contract (ACC); and is approved in writing by HUD.

Proposed § 970.3(b)(6) would revise the currently codified § 970.3(b)(5), on the use of common areas and unoccupied dwelling units, similarly to clarify that the use must be for authorized non-dwelling purposes related to public housing.

Proposed new § 970.3(b)(7) would permit, as an exception, the leasing of the entire project only for one year or less for a strictly limited purpose. That purpose is to allow a prospective owner-entity to show site control in an application for funding for the redevelopment of the project, such as low-income housing tax credits (LIHTC). Only the entire project, not individual dwelling units, may be leased under this exception.

Proposed § 970.3(b)(8) would revise currently codified § 970.3(b)(6) on reconfiguration of interior space to clarify that reconfiguration as an exception to demolition may only be done for an authorized use related to the normal operation of public housing and without demolition as defined in 24 CFR 970.5, as permitted by the ACC. As proposed, such reconfiguration would have to be done in accordance with all HUD requirements and approvals, and any resulting reduction in bedroom numbers would have to be reflected in the Inventory Management System (IMS)/ PIH Information Center (PIC) or any future system for collecting similar information.



Proposed § 970.3(b)(9) would revise currently codified § 970.3(b)(7), which relates to transfers, easements, and transfers of utility systems. The proposed rule would require that such easements, rights of way, and transfers be approved in writing.

Based on experience since the regulations were promulgated in 2006, HUD has found that the general exception for leases of units or land for one year or less (currently codified § 970.3(b)(10)) is not always being used for the intended purpose. Specifically, HUD has found that some PHAs have incorrectly relied on this exception to enter into leases that did not otherwise comply with the PHA's ACC with HUD and other public housing requirements and this was never the intent of this exception. In addition, HUD has found that some PHAs incorrectly used this exception to avoid the disposition requirements of section 18 of the 1937 Act (42 U.S.C. 1437p), for instance, by structuring a long-term lease as a one-year lease and then renewing that lease every year. As a result, § 970.3(b)(10) is proposed to be removed by this rule. Proposed § 970.3(b)(5) specifies the conditions under which leases of units and other PHA property will be allowed. The current § 970.3(b)(8), which exempts a whole or partial taking by a public or quasi-public agency, would be redesignated at § 970.3(b)(10). Proposed § 970.3(b)(11) would clarify currently codified § 970.3(b)(11), which addresses conveyance of PHA property to allow for mixed-finance development under 24 CFR 905.604. As proposed, real property, including land, improvements, or both, may be acquired by a PHA with public housing or other funds, or donated to a PHA, and sold or otherwise transferred to an owner entity prior to DOFA, to enable the owner entity to develop the property using the mixed finance method in 24 CFR 905.604.

Proposed § 970.3(b)(12) clarifies that this exemption for disposition of vacant land for mixed-finance development is only an exemption from these regulations, and not from the

statutory requirements in section 18 of the 1937 Act, and only if the PHA submits an application in the form prescribed by HUD, and receives HUD approval of the application before commencing disposition of the property.

Section 18(f) of the 1937 Act (42 U.S.C. 1437p(f)) and the currently codified regulations at § 970.3(b)(13)) provide an exception for most requirements under the statute for demolition of the lesser of 5 dwelling units or 5 percent of the PHA's total units in any 5-year period (referred to as de minimis demolition). HUD determined that environmental review, which has authority separate from the 1937 Act, applies, which the current regulation reflects, and the proposed rule would continue to reflect. In addition, the 1937 Act states that such de minimis exception only applies if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents or the demolished unit was beyond repair. This proposed rule would revise § 970.3(b)(13) to require that the PHA must receive acknowledgment by HUD of the required notification prior to the commencement of the demolition. Such requirement would confirm that HUD is in fact aware of the proposed demolition and proposed use of space before the demolition commences.

Proposed § 970.3(b)(15) clarifies the current language to indicate that demolition of severely distressed units as a part of a revitalization plan in connection with a Choice Neighborhoods grant is exempt from these regulations.

The proposed rule would add a new § 970.3(b)(16) to provide for demolition of projects made necessary by disaster or sudden accident or casualty loss. It has been HUD's practice, as reflected in the ACC, to allow for such demolitions in order to ensure the health and safety of public housing residents.

At proposed § 970.3(b)(17), the rule would add an exception to this rule for dispositions of a de minimis nature that are necessary to correct and/or clarify legal descriptions to deed or ownership documents, provided such de minimis dispositions are approved by HUD. Generally, these are dispositions of a very small amount of property, in some cases literally a few square feet, that should never have been owned by the PHA but through an error were added to the legal description of the property. It is necessary to correct these small inaccuracies because, if a PHA's deed to public housing property reflects other than what was originally intended in the PHA's acquisition of the property, a PHA may be subject to unanticipated liabilities. These small dispositions are authorized under section 18(a)(2)(B) of the 1937 Act (42 U.S.C. 1437p(a)(2)(B)), which states that a justification for disposition is that retention of the property is not in the best interests of the PHA because "the public housing agency has otherwise determined the disposition to be appropriate for reasons that are in the best interests of the residents and the public housing agency."

The proposed rule would add a new § 970.3(b)(18), which would reorganize the consolidation of occupancy exception currently found at § 970.25(b), and authorized under section 18(e) of the 1937 Act (42 U.S.C. 1437p(e)). The purpose of such consolidation must be to improve the living conditions of residents or to provide greater efficiency in serving the residents. For example, in the case of older projects that are badly in need of modernization, health hazards, such as lack of heating and issues with plumbing, may occur in certain buildings. Residents can be consolidated into healthier buildings with vacancies so that the PHA can concentrate on providing services over a more compact and manageable area, and the residents have a better living environment.

In addition, as it proposes for other exceptions, the rule would add legal parameters to ensure that PHAs take such consolidation actions pursuant to applicable federal laws and requirements, including the PHA's written policies on admissions and continued occupancy, the PHA's section 8 Administrative Plan (24 CFR part 982), and PHA Plan requirements (24 CFR part 903). The PHA would be required as well to notify HUD in advance of such occupancy consolidation.

HUD proposes to add a new 24 CFR 970.3(c) to clarify that the enumerated activities in § 970.3(b) are exempt from section 18 requirements only. As described in § 970.21(g) of this proposed rule, section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d) (section 104(d)) operates independently of section 18 and cannot be limited administratively by HUD. If any of the activities listed in § 970.3(b) involve demolition or conversion of a lower-income dwelling unit, as those terms are defined in 24 CFR part 42, subpart C, and include funding pursuant to the Community Development Block Grant Program (42 U.S.C. 5301 et seq.), the Urban Development Action Grant Program (42 U.S.C. 5318) or the HOME Investment Partnerships Program (42 U.S.C. 12701 et seq.), the relocation assistance and one-for-one replacement requirements of section 104(d) may apply.

Definitions (§ 970.5). The proposed rule would add several new definitions to this section, and revise or remove others.

- Accessible or accessibility would be added, referencing the definition of “accessible” at 24 CFR 8.3.
- Commensurate public benefit would be added. While this phrase is used in current § 970.19 to describe a standard for disposition of a property for less than fair market value where there are other compensating benefits. However,

currently the phrase is not defined. In order to eliminate any possible ambiguity about the applicable standard, HUD proposes to define this phrase. The definition would make clear that public benefits in this context are “as approved by HUD.” The definition also supplies four general cases of commensurate public benefits: (1) rental units with a 30-year use restriction; (2) homeownership units affordable to low-income families; (3) non-dwelling structures or facilities to serve low-income families as approved by HUD; and (4) other or additional benefits as approved by HUD, which may include, in part, planning and carrying out related activities under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

- “Comparable housing” would be added. This term means housing that meets HQS (or such successor standard that HUD may adopt) and is appropriate in size for the household, and located in an area that is generally not less desirable than the location of the displaced resident’s current public housing unit. In determining comparable housing, a PHA shall also consider the following criteria (in aggregate): neighborhood safety; quality of local schools; accessibility of amenities (e.g., transportation, employment); and exposure to adverse environmental conditions. The comparable location should not expose displaced persons to increased segregation by race or national origin, poverty, crime or adverse environmental conditions. For residents with disabilities, comparable housing must include the accessibility features that the resident needs and must be located in the most integrated setting appropriate for the resident with respect to the residents’ ability to interact to the fullest extent possible with non-disabled

persons and access to community-based services. Such housing is often subsidized housing, but does not have to be if there is comparable non-subsidized housing available on the private market.

- “Demolition” would be revised from the definition in the currently codified § 970.5. The revised term defines demolition as the removal by razing or other means, in whole or in part, of one or more permanent buildings of a project such as to render the building(s) uninhabitable as defined by the applicable building occupancy code. The revised definition states that a demolition involves not only any four or more of the factors listed in the current definition (including envelope removal (roof, windows, exterior walls), kitchen removal, bathroom removal, electrical system removal (unit service panels and distribution circuits, and plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both)), but also the lifting and relocating of a building from its existing site to another not covered by the same Declaration of Trust.
- “Declaration of Trust (DOT)” is proposed to be added. This term is not currently defined in 24 CFR part 970, and it would be beneficial to define what the term means in this context. Generally, this term would refer to a legal instrument that grants HUD an interest in a project, and provides public notice that the project must be operated in accordance with all federal requirements for public housing.
- “Displaced resident” would be added to § 970.5. This term means a resident of public housing, one that is assisted with Section 8, or is eligible for assistance under an MTW agency’s HUD-approved annual MTW plan, that is relocated permanently from the project as a direct result of a demolition and/or disposition

action under this part. The term includes any members of the resident's household and over-income residents who are, at the time of displacement, eligible for occupancy under PHA policies for continued occupancy or other special rent exceptions.

- “Disposition” would be added. The proposed definition would include both sales and transfers to an independent legal entity under the relevant state's law, including an affiliate that is legally independent. Under this definition, a PHA would be able to make a transfer to an affiliate such as a non-profit in which the PHA has a controlling interest, so long as the non-profit is a separate legal entity. A PHA could not dispose to an instrumentality of the PHA, because the instrumentality essentially is the PHA—it is fully controlled by the PHA and assumes the role of the PHA. “Affiliate” and “instrumentality” are both defined at 24 CFR 905.604(b)(3) and (4).
- “Emergency” would be added. This term is defined to mean any occasion or instance, for which, in the determination of the President or HUD, federal assistance is needed to supplement state and local efforts and capabilities to save lives and protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. This proposed definition is based on the definition of “emergency” found in 42 U.S.C. 5122.
- “Fair Market Value (FMV)” would be added. This definition provides that FMV is the estimated value of a project, as determined by an independent appraiser contracted but not employed by the PHA, and completed within 6 months of the application, unless HUD approves a longer time. This definition would capture

the importance of the appraiser being independent of the PHA and the appraisal being completed on a timely basis.

- “Major disaster” would be added. This term is defined to mean any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts and available resources of states, local governments, and disaster relief organizations, or causes severe danger, hardship, or suffering, as determined by HUD. This proposed definition is based on the definition of “major hazard” found in 42 U.S.C. 5122.
- The rule incorporates the general definition of “public housing agency (PHA),” at 24 CFR 5.100.
- The rule would incorporate the definition of “public housing funds” from § 905.108, and specify that as to disposition proceeds that are public housing funds, § 970.20(d) applies.
- The rule would add a definition of “project” to clarify that the term refers to all public housing property (units, vacant land, air rights, non-dwelling and dwelling buildings, and appurtenant equipment and personal property purchased by the PHA using 1937 Act funds) and has the same meaning as development, which is often used in other HUD issuances and guidance. In the currently codified part 970, both terms are used. This proposed rule would use the term “project” as



defined in preference to “development.” This rule would clarify that the term “project” includes mixed-finance public housing units. Additionally, because by definition the term now includes appurtenant equipment and property, when a PHA disposes of a project or portion of a project, it is generally expected that the related appurtenances will be disposed of as well.

- “Public housing unit” would be added to clarify what HUD means by the term in the context of demolition and disposition. The definition includes any dwelling unit in a project, including a dwelling unit developed for homeownership under the 1937 Act (other than units developed for homeownership under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y)), because that is a tenant-based program and does not constitute a unit “developed” for homeownership) prior to the transfer of title of that unit to the homebuyer.
- The phrase “related to the normal operation of the project for public housing purposes” would be added to mean activities that are required or permitted to meet the obligations of the ACC, including the provision of low-income housing and related services and other benefits to the residents of the PHA. This phrase is used in § 970.3.
- “Resident” would be defined. The purpose of the definition is to clarify that a resident under part 970 includes an individual or family assisted under HUD’s Housing Choice Voucher program (section 8 program), or one that is eligible for assistance under an MTW agency’s HUD-approved annual MTW plan, in addition to those who reside in public housing, in accordance with the 1937 Act.

- The term “qualified PHA” would be added and defined as a PHA that is considered a “qualified public housing agency” under section 2702 of HERA, codified at section 5A(b)(3)(C) of the 1937 Act (42 U.S.C. 1437c–1(b)(3)(C)). Essentially, this is a non-troubled PHA that does not have a recent failing Management Assessment Program score, and which has 550 or fewer units, considering only public housing units and vouchers under 42 U.S.C. 1437f(o).

The proposed rule would add definitions for the following terms – “Housing Quality Standards (HQS)”, housing construction cost (HCC)”, “low-income families”, “low-income housing”, “PHA or Public Housing Agency,” “PHA Plan”, and “Resident Management Corporation (RMC)” – by cross-referencing to those terms found elsewhere in HUD’s codified regulations. The definition of “total development cost” would be removed because total development cost would be replaced by HCC.

The proposed rule would also revise some existing definitions. The definition of “chief executive officer of a unit of local government” would clarify that the officer must have the authority to contractually bind the local government jurisdiction. The definition of “firm financial commitment” would be revised to remove the requirement that contingencies must be satisfied before the closing of the transaction. Other minor editorial changes are made to definitions to update terminology or correct errors.

General requirements for HUD review and approval of a demolition, disposition, or combined application (§ 970.7). The proposed rule would make substantial revisions to § 970.7, the title of which would be revised to read “General requirements for HUD review and approval of a demolition, disposition, or combined application.” A paragraph on “Sufficiency of application” would be added to make explicit that HUD will not consider an application for

demolition, disposition, or both, unless the application contains all the substantive information required in § 970.7 and in this part.

Section 970.7(c), which addresses an application's supporting documentation, would be revised to require additional material.

Paragraph (c)(1) would require that the PHA not only "describe" the demolition or disposition action, but that the PHA has specifically authorized the action in its PHA plan or significant amendment to that plan, and the plan is consistent with any plans, policies, assessment, or strategies prepared pursuant to the PHA plan, for example, the deconcentration plan under 24 CFR 903.2 or the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). An exception would be provided for qualified PHAs (those non-troubled PHAs whose public housing and Section 8 units combined are fewer than 550 units), which are not required to file PHA plans under HERA. In those cases, the qualified PHA must describe the proposed action at its required annual public hearing (or second public hearing if it determines to submit an application for demolition and/or disposition between its annual public hearings). Also, the PHA will certify that the proposed activities are consistent with its Deconcentration Plan (24 CFR 903.2), its obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)), and any applicable Consolidated Plan (24 CFR 91.2).

Paragraph (c)(2), requiring a description of the property to be demolished, would be revised to require bedroom size, whether the units meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, and the acreage and legal description of the land. The description would include both dwelling and non-dwelling units.

A new paragraph (c)(3) would be added to § 970.7 and would require information about the number of vacant units approved for the demolition, disposition, or combined action, and a narrative explanation of the reasons for any vacancies. The explanation could be, for example, health or safety issues have arisen; the PHA is consolidating occupancy under § 970.3(b)(18); or there is an emergency or major disaster.

Paragraph (c)(4) would require a description of the demolition and/or disposition action, and, if disposition is involved, the method of disposition, which may include methods in addition to sale, such as leases, negotiated dispositions, and public bids. To ensure that future use of the property to be disposed of or demolished would be used for low-income housing purposes, this paragraph would also require a statement about the proposed future use of the property, including any anticipated subsidies expected to be used for future low-income housing on the site of the former project.

The current § 970.7(a)(4), which requires the inclusion of a general timetable for the proposed action, would be redesignated at § 970.7(c)(5). The current § 970.7(a)(5), which requires a statement and other supporting documentation justifying the proposed demolition and/or disposition under the applicable criteria of §§ 970.15 or 970.17, would be redesignated at § 970.7(c)(6).

Proposed § 970.7(c)(2) would require the portion of the application that contains a description of all identifiable property to include appurtenant personal property and equipment, in conformance to the proposed definition of “project.” Such property and equipment would consist of items purchased with 1937 Act funds for use in connection with the project.

Proposed § 970.7(c)(7) would revise currently codified § 970.7(a)(6) to add more specificity to the information submitted in the resident relocation plan, which is required when

any residents will be displaced by a proposed demolition and/or disposition action. This additional information would include:

- A certification that the PHA will comply with the relocation provisions of this part;
- The estimated number of individual residents and families to be displaced;
- The comparable housing resources the PHA will provide to displaced residents;
- The type of housing counseling services the PHA plans to provide, including mobility counseling for residents, and affirmative marketing outreach to persons in groups whose representation among applicants and participants in the PHA's housing programs is significantly less than in the PHA's service area and those least likely to apply, including outreach appropriate to individuals with limited English proficiency, and accessible to persons with disabilities;
- An estimate of the costs for housing counseling services and resident relocation (which requirement is currently in § 970.7(a)(11), which would be removed), and the expected source for payment for these expenses;
- Evidence that displaced residents will be relocated in compliance with all civil rights and fair housing laws, including all affirmatively furthering fair housing regulations, the laws, and authorities listed in 24 CFR 5.105, and the identification of accessible units for displaced residents with disabilities;
- Evidence that residents with disabilities will be relocated in housing that meets their accessibility needs in the most integrated setting appropriate to their needs, that is, the setting that enables individuals with a disability to interact with non-

disabled persons to the greatest extent possible and provides access to community-based services;

- A relocation timetable, which indicates the estimated number of days after HUD approval of the demolition, disposition, or combined action that the PHA plans to begin relocating residents;
- Evidence that displaced residents will be relocated in compliance with all nondiscrimination and equal opportunity requirements;
- A plan for determining and meeting the functional needs of displaced residents with disabilities, including communications assistance under 24 CFR 8.6 and assistance in locating units that provide appropriate access to social services, reasonable accommodations, compliance with section 504 of the Rehabilitation Act of 1973;
- A marketing plan that informs residents of affordable housing units or other new developments in the market area, especially to persons who may not be aware of the housing opportunity, and including information in languages other than English as needed; and
- A plan and information under § 970.21(d) if applicable.

The relocation timetable information will be used to determine the PHA's Operating Fund eligibility under 24 CFR part 990, which may include the PHA's eligibility for an asset-repositioning fee (or add-on to Operating Funds) under 24 CFR 990.190(h). As to comparable housing resources the PHA will provide to displaced residents, if some residents are not eligible to move to other public or assisted housing, the PHA must describe why such residents are not

eligible and what resources it will make available to provide comparable housing for such displaced residents.

This additional relocation information is to ensure that the PHA is ready and able to comply with Section 18 relocation requirements if and when HUD approves the demolition, disposition, or combined action. The proposed § 970.7(c)(7) would also clarify that the Relocation Plan must be a separate written document that the PHA must prepare and submit as part of its application for demolition or disposition, or both.

Proposed § 970.7(c)(8) would require more supporting evidence on a PHA's required resident consultation than the current § 970.7(a)(7). The supporting evidence under the proposed rule must include: a description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; and any certifications or other written documentation that the PHA receives from the RAB (or equivalent body) and resident council regarding resident support or opposition. In addition, there must be a description and/or documentation evidencing that the PHA communicated with affected residents and other required groups in a manner that was effective for persons with hearing, visual, and other communications-related disabilities; that public hearing facilities and services were physically accessible to persons with disabilities; and that appropriate written or oral translations and language assistance services, as required, were provided for Limited English Proficient (LEP) individuals, consistent with the requirements of 24 CFR 8.6. These requirements are to ensure that the required consultations are held and issues raised by residents are considered.

The current § 970.7(a)(8), which requires the inclusion of evidence of compliance with the offering to resident organizations in the case of disposition, would be redesignated at § 970.7(c)(9). The current § 970.7(a)(9), which requires, in the case of disposition, the inclusion of the FMV of the project as established on the basis of at least one independent appraisal, unless otherwise determined by HUD, would be redesignated at § 970.7(c)(11). The current § 970.7(a)(10), which requires, in the case of disposition, the inclusion of estimates of the gross and net proceeds to be realized, would be redesignated at § 970.7(c)(12).

Under proposed § 970.7(c)(13), in the case of a sale for less than FMV based on commensurate public benefit, HUD will consider the anticipated future use of the project after disposition required in § 970.7(c)(4)(iii). In addition, the supporting information for the application shall include: a detailed description of any housing that will be located on the property, including the number of units, bedroom size, accessibility, affordability, and priorities for displaced residents; the proposed length of time in which the acquiring entity will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g. number of affordable units) arising from proposed disposition and the FMV of the property in determining if a period of less than 30 years is acceptable); proposed legal documentation (e.g. use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use; a plan to implement the requirement that income-eligible, displaced residents be offered an opportunity to return if housing units will be developed on-site at the former project as outlined in § 970.21(d); and other information that HUD may require in order to make the determination.



HUD's part 970 regulations currently allow PHAs to request a waiver of the requirement to apply the proceeds of disposition to the repayment of outstanding debt (see § 970.19(e)(1)), which is required unless waived by HUD under section 18p(a)(5)(A) of the 1937 Act (42 U.S.C. 1437p(a)(5)(A)). Proposed § 970.7(c)(14) provides more details about the types of debt waivers that can and cannot be requested. HUD does not have the statutory authority to waive modernization debt, such as Capital Fund Financing Program (CFFP) debt, Energy Performance Contracting (EPC) debt, and Operating Fund Financing Program (OFFP) debt.

The current § 970.7(a)(13), which requires the inclusion a copy of a resolution by the PHA's Board of Commissioners approving the specific demolition and/or disposition application, would be redesignated at § 970.7(c)(16). The current § 970.7(a)(14), which requires evidence that the application was developed in consultation with appropriate government officials, would be redesignated at § 970.7(c)(17). The proposed rule at § 970.7(c)(18) would revise the environmental review requirement in currently codified § 970.13 to address environmental justice issues as applicable.

The proposed rule would add submission requirements related to civil rights compliance. Proposed § 970.7(c)(19) would add a requirement to submit a statement as to whether the PHA is subject to a voluntary compliance agreement (VCA), conciliation agreement, settlement agreement, consent order, consent decree, or any other civil rights related final judicial ruling or decision, in connection with the civil rights and fair housing rights of residents who will be affected by the proposed demolition, disposition, or combined action, and a certification that the demolition or disposition, or combined action does not violate any civil rights law, remedial order or agreement, VCA, conciliation agreement, final judgment, consent order, consent decree, settlement agreement, or any other civil rights related final judicial ruling or decision.

This section would also require a certification that the proposed activities will not violate nondiscrimination or equal opportunity requirements, and that the PHA will meet affirmative obligations to provide equal housing opportunity, supported by: a statement that the proposed demolition and/or disposition will not prevent the PHA from fulfilling any VCA, conciliation agreement final judgment, consent order, consent decree, settlement agreement, or any other civil rights related final judicial ruling or decision, as well as a description of how the proposed demolition and/or disposition will help the PHA meet its affirmative obligations, including but not limited to the obligations to overcome discriminatory effects of the PHA's use of 1937 Act funds pursuant to 24 CFR part 1 to address the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)); deconcentration plans adopted by the PHA pursuant to 24 CFR part 903; and housing accessibility, effective communications, and integration requirements under 24 CFR part 8.

The PHA would also certify that it does not have any outstanding charges from HUD or a substantially equivalent state or local fair housing agency concerning a violation of the Fair Housing Act (42 U.S.C. 3601-19); it is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice; it does not have outstanding letters of findings identifying noncompliance under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 294), or section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309); and it has not received a cause determination from a substantially equivalent state or local fair housing agency concerning a violation of provisions of a state or local law prohibiting discrimination in housing based on sexual orientation, gender identity, or source of income; and any additional supporting information that may be requested by HUD, that shows that the proposed demolition and/or disposition will not maintain or

increase segregation on the basis of race, ethnicity, or disability and will not otherwise violate applicable nondiscrimination or equal opportunity requirements, including a description of any affirmative efforts to prevent discriminatory effects. The purpose of these requirements is to ensure that PHAs that request demolition or disposition do not discriminate against residents, are not in violation of any civil rights-related law, agreements or orders, and that HUD can ensure that the residents who are displaced are not unlawfully segregated or denied appropriate housing because of their membership in a protected class.

Proposed § 970.7(c)(20) would require a description of the civil rights-related characteristics (including race, color, religion, sex, national origin, familial status, and disability) of both the residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and of the residents on the PHA's waiting list (by bedroom size). The purpose of these requirements is to ensure that PHAs that request demolition or disposition are not in violation of any civil rights-related *laws*, agreements, or orders, and that HUD can ensure that the residents who are displaced are not unlawfully segregated or denied appropriate housing because of their membership in a protected class.

Proposed §§ 970.7(c)(10), (c)(15), and (c)(21) would require material related to legal eligibility to undertake the demolition or disposition. In the case of disposition, a legal opinion would be required that the acquiring entity is a separate entity (i.e., an affiliate or fully independent entity rather than an instrumentality of the PHA) under the applicable state law. In the case where the PHA has applied for or been approved for financing under a HUD financing program such as the Capital Fund Financing Program (CFFP), the Operating Funding Financing Program (OFFP), or the Energy Performance Contract (EPC) program, the PHA must submit a

legal opinion stating that the demolition, disposition, or combined action is permitted pursuant to the legal documentation associated with any such CFFP, OFFP, or EPC program. In addition the PHA must submit a general certification that it will comply with the program regulations and any conditions of HUD's approval.

Finally, proposed § 970.7(c)(22) would permit HUD to request any additional documentation it determines necessary to support the application and assist HUD in making a determination whether or not to approve it.

Under both the current regulations and this proposed rule, a PHA must obtain written approval from HUD prior to demolishing or disposing of public housing (see § 970.7(a)). This proposed rule would allow HUD to require PHAs to adhere to certain terms and conditions based on the approval documents. Proposed § 970.7(d) states that if a PHA includes documentation, certifications, assurances, or legal opinions in its application that exceed the requirements of section 18 of the 1937 Act or the regulations of part 970 (e.g., that commit to provide residents with an opportunity to return to new affordable housing units that may be developed with disposition proceeds and/or on the public housing property when such an opportunity is not required by this part), HUD may establish additional requirements, based on such documentation, in its approval of the demolition, disposition, or combined action. Further, this proposed section states that the PHA cannot vary from the terms and conditions of HUD approval without prior written approval from HUD.

Currently codified § 970.7(b)(1) allows for PHAs to request rescission of an approval of a demolition or disposition application based on a board resolution and documentation that the conditions that led to the original request have significantly changed or been removed. Proposed § 970.7(e) would also allow a PHA to amend an earlier approval, on a case-by-case basis, based

on the PHA's submission (in the form prescribed by HUD) of an explanation and documentation, if applicable, evidencing the reason for the requested change. The current requirement at § 970.7(b)(2), which provides that substitution or addition of units requires the submission of a new application for those units would be removed.

Resident Participation and Opportunity to Purchase (§ 970.9). The proposed rule would provide more specificity to the resident consultation requirements to give PHAs better guidance and to ensure that resident consultation is as effective as possible. Proposed § 970.9(a) would list with specificity the residents and resident groups with which the PHA must consult, as well as specific steps required to be taken. Included in the consultation, in addition to residents residing in the project proposed for the action, would be any resident councils, resident organizations for the project, PHA-wide resident organizations that will be affected, and the applicable RAB. Consultation would mandatorily include the following: providing a copy of the demolition, disposition, or combined application, or posting it on the PHA's website, which must be accessible; consulting on any report on the environmental or health effects of the proposed activities; consulting on the final application; consulting on the relocation plan and opportunity to return to ACC units, if applicable; stating that residents and groups have the right to submit written comments, that the PHA will respond to those comments, and that the comments and responses will be submitted to HUD as part of the PHA's application materials. The PHA would have to provide residents and resident groups with a reasonable time frame to submit written comments, and must respond to those comments within a reasonable time frame.

In addition, PHAs must take steps to ensure that they communicate with public housing and rental assistance applicants and residents that are effective for persons with hearing, visual, and other communications-related disabilities consistent with section 504 of the Rehabilitation

Act of 1973, and as applicable, the Americans with Disabilities Act (42 U.S.C. 12101 et seq.). This includes ensuring that notices, policies, and procedures are made available via accessible communication methods including the use of alternative formats, such as Braille, audio, large type, sign language interpreters, assistive listening devices, and other similar methods, and are written using plain language. Additionally, PHAs must ensure that the public meeting facilities and services used are physically accessible to persons with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 and that Limited English Proficient (LEP) individuals will have meaningful access to programs and activities, in accordance with Title VI of the Civil Rights Act of 1974, as amended, 42 U.S.C. 2000, and Executive Order 13166.

As part of the consultation, in addition to the requirement for the PHA to consult residents and resident organizations on the application as stated in proposed § 970.9(a)(5)(i) and (ii), the PHA must consult with the residents and resident organizations on any report on the environmental or health effects of the proposed demolition, disposition, or combined action (see proposed § 970.9(a)(5)(iii)).

Proposed § 970.9(b) would require, similarly to the currently codified section, the PHA in appropriate circumstances to offer to sell the project proposed for disposition to any “Established Eligible Organization,” which is defined as a resident organization, resident management corporation (RMC), or a nonprofit organization acting on behalf of the residents. Exceptions in proposed § 970.9(b)(3) would be similar to those in the currently codified rule, with a few clarifications and updating of vocabulary. Proposed § 970.9(b)(4) would remove language referencing the partial disposition of PHA property and use the term “project” instead, under the proposed revised definition of which a partial disposition would be included. If there is no exception to the resident offer requirement and if an Established Eligible Organization has

expressed an interest under § 970.9(c), then the procedures in proposed § 970.11, “Procedures for the offer of sale to established eligible organizations,” would apply.

Procedure for the Offer of Sale to an Established Eligible Organization (§ 970.11).

Proposed § 970.11 would be generally similar to the currently codified section. However, current paragraph (d), “Contents of the initial written notification,” which states the information the PHA must provide to the Established Eligible Organization when it notifies them of the upcoming disposition, would be moved and redesignated as § 970.11(b), to immediately follow the requirement to send the notification (current paragraphs (b) and (c) accordingly would be redesignated (c) and (d)).

Proposed § 970.11(b) would be revised largely to update terminology; however, a couple of substantive changes are proposed. Proposed § 970.11(b)(1) replaces the phrase “development, or portion of the development,” with the term “project,” which would also include a portion of a project. In addition, the proposed rule would add “the number of accessible units or units that otherwise contain accessible features” to the information that must be provided in the initial written notification. Proposed § 970.11(b)(5) would revise currently codified § 970.11(d)(5), which states that public housing developments sold to resident organizations will not receive capital or operating funds after the disposition. The proposed rule would revise this general statement to indicate that if the Established Eligible Organization is an RMC and enters into an ACC with HUD, it will receive Operating and Capital Funds in accordance with 24 CFR part 964 (Tenant Participation and Tenant Opportunities in Public Housing), the ACC, and applicable federal law and regulation.

Proposed § 970.11(e), “Response to notice of sale,” would be updated to state that the count of the 30-day response time begins with the date the PHA’s notice is postmarked.

Proposed § 970.11(h) would change the addressee for the letter of appeal from the field office director to HUD, and break the single paragraph into 2 numbered paragraphs solely for better readability, and would specify the initial 30-day clock for HUD's response begins to run on the date on which HUD receives the appeal. Proposed § 970.11(i), which states the required contents of the Established Eligible Organization's proposal, except for the use of updated terminology (for instance, using the terms "project" and "Established Eligible Organization"), would be substantively the same as the current regulation.

Proposed § 970.11(i)(6), which would require the resident organization's proposal to include a plan for financing the purchase of the project similar to the currently codified § 970.11(i)(6), would also require the financing to include paying for any necessary accessibility modifications.

Proposed § 970.11(j) summarizes the PHA's responsibilities, which are to: prepare and distribute the notice of disposition; evaluate the proposals received and make selections based on regulatory criteria in § 970.11(b); obtain the certifications from the executive director or board of commissioners required in § 970.11(k); consult with residents as required in § 970.9(a); not act in an arbitrary and capricious manner and give full and fair consideration to any offer from an Established Eligible Organization; and accept an offer if the offer meets the terms of sale. This section does not change the obligations that PHAs must currently meet under the codified regulations, but updates some terminology and provides some clarification to existing language where HUD thought further clarification would enhance understanding of the obligations required.

Proposed § 970.11(k) would change its title from "PHA post-offer requirements" to "Offer by an Established Eligible Organization," and, like the current § 970.11(k), would state



the procedures that the PHA is to follow once a resident offer is made. Except for the removal of language related to a partial disposition because it is no longer needed under the new definition of “project,” this section is the same as in the currently codified regulation. Essentially, this section requires the PHA to fully document that it correctly followed the resident offer requirements, including a board resolution of each eligible organization that the eligible organization received the PHA’s offer, that the organization understands the offer, and that it waives its opportunity to purchase; alternatively, a certification of the executive director or board of commissioners of the PHA that the 30-day time has expired and no resident offer was received; or a certification, with supporting documentation, that the offer was rejected by the PHA.

Civil Rights and Equal Opportunity Review (§ 970.12). The proposed rule would add a new § 970.12 that describes compliance with civil rights and equal opportunity requirements. HUD will review the PHA’s civil rights certification under section 5A(d)(16) of the 1937 Act (42 U.S.C. 1437c-1(d)(16)), and other related information that may be available to HUD or requested by HUD. Pursuant to § 970.29, HUD will disapprove a PHA’s application for demolition and/or disposition if HUD determines that any civil rights certifications or submissions required under this part are incomplete, inaccurate, or inconsistent with the requirements stated in this section.

Environmental Review Requirements (§ 970.13). The environmental review requirements in proposed § 970.13 would be substantively the same as in the currently codified § 970.13. Environmental review requirements apply to the demolition, disposition, or combined action being taken and any known future re-use. The current regulation and this proposed rule state four factors to be considered in determining whether a future re-use is “known.” These factors are as follows: (1) that funding has been committed; (2) a grant application involving the

site has been filed; (3) a government (federal, state, or local) has made a commitment to take an action that will facilitate a particular re-use of the site, and this may or may not be a physical action; and (4) that there are architectural, engineering, or design plans that go beyond preliminary stages.

Section 3 Compliance (§ 970.14). Pursuant to section 3 of the Housing and Urban Development Act of 1968 (section 3) (12 U.S.C. 1701u), and HUD's regulation at 24 CFR part 135, HUD requires programs or projects funded by public housing funds to provide employment, training, contracting, and economic opportunities to the greatest extent feasible, to low and very-low income persons. The proposed rule would implement this requirement by adding a new § 970.14. This requirement applies to demolition and disposition (and combined) actions if public housing funds are used. If public housing funds are not used so that the requirement does not apply, planning and carrying out section 3 activities related to these proposed actions would satisfy, in part, the commensurate public benefit requirement for below FMV dispositions pursuant to § 970.19.

Specific Criteria for HUD Approval of a Demolition Application (§ 970.15). Proposed § 970.15, like currently codified § 970.15, states the specific criteria for HUD approval of demolition applications, although the section would be reorganized and more detail would be added to some of the requirements. The proposed rule would reorganize this section to keep similar material together; for example, proposed § 970.15(a)(1) would cover the factor of obsolescence making a project unsuitable for housing purposes, and then include the list of major problems indicative of obsolescence to subparagraphs.

The problems that cause obsolescence for purposes of this rule are structural deficiencies, serious outstanding capital needs, and design or site issues such as severe erosion or flooding.

While the currently codified regulation, at § 970.15(b)(1)(i), lists specific kinds of structural deficiencies, HUD believes that other structural deficiencies than those mentioned could cause obsolescence. At the same time, HUD acknowledges that there must be some degree of objectivity in the obsolescence determination. Therefore, this rule would propose at § 970.15(a)(1)(i) that obsolescence be found by an independent (that is, not a regular employee of the PHA) architect or engineer. HUD will review the determination and supporting documentation, and may obtain additional information, to ensure against any discriminatory effects of the proposed demolition – such as avoidance of the obligation to provide accessible housing for persons with disabilities. Furthermore, HUD seeks to clarify that, if the issue is a site issue related to the location of the project, such as physical deterioration of the neighborhood, a change from residential to industrial or commercial development in the neighborhood, or environmental conditions as determined by an environmental review in accordance with HUD’s environmental regulations at 24 CFR part 50 or part 58, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use, then the proposed rule would require that the PHA simultaneously submit a disposition application. The reason for this proposed change is that if the site is not suitable for public housing such that existing public housing had to be demolished, it should not be redeveloped for low-income housing purposes in the future, even if of a lesser density. Instead, the PHA should dispose of the unsuitably located property.

The criteria of “no reasonable program of modifications will be cost-effective to return the project to its useful life” would be addressed in proposed § 970.15(a)(2). The test for cost effectiveness in this context would be revised from a percentage of total development cost based on type of structure (elevator or non-elevator), to a simple test as to whether the cost of

modifications would exceed the HCC for new housing in effect at the time the application is submitted to HUD. HCC is regularly updated and well understood by the public housing industry.

In the case of partial demolitions, proposed § 970.15(b) would revise currently codified § 970.15(c) to remove the requirement for an additional PHA certification that the proposed action would reduce development density to allow better access by emergency services or improve marketability. Instead, in the case of contiguous (non-scattered site) projects, the PHA would have to certify that the demolition will help to ensure the viability of the remaining portion of the project. In the case of scattered site projects, the viability certification would not be required. Where there is no contiguous project, there is no “remaining portion of the project” that would be affected, so the viability concern would not apply.

Proposed § 970.15(c) would require the PHA, unless the PHA also submits an application for disposition of the project at the same time it submits the demolition application, to also certify that the vacant land comprising the project after the demolition of the buildings shall be used for low-income housing purposes as permitted by the ACC, which purposes may initially include land banking as approved in writing by HUD if a use is not determined. In addition, proposed § 970.15(d) would require a demolition to be completed in 2 years of the date of HUD approval, unless the PHA receives from HUD an extension in writing. Proposed paragraphs (c) and (d) of § 970.15 would be new requirements.

#### Specific Criteria and Conditions for HUD Approval of a Disposition (§ 970.17).

Proposed § 970.17, like currently codified § 970.17, states the specific reasons for which HUD may approve of disposition applications. The standard would in part remain the same as currently codified in regulation, which is that HUD will approve an application for disposition

when retention of the project is not in the best interests of the residents or the PHA for at least one of these reasons: the conditions in the area surrounding the project adversely affect the health and safety of the residents (proposed § 970.17(a)); disposition allows for the acquisition, development, or rehabilitation of other properties that will be operated as low-income housing more efficiently, effectively, or both (proposed § 970.17(b)); the PHA has determined the disposition to be appropriate (proposed § 970.17(c)); and, in the case of a disposition that does not include dwellings, the PHA must certify that the portion disposed of exceeds the needs of the project or the disposition is incidental to, or does not interfere with, the continued operation of the remainder of the project.

In addition, the proposed rule would revise and add more detail to some of the existing standards. Proposed § 970.17(b) would add examples of what would be considered more efficient and effective operation. In addition, the rule would require the PHA to demonstrate to the satisfaction of HUD that the units will be replaced with other low-income housing units. Section 970.17(b)(2) clarifies that the PHA must demonstrate to the satisfaction of HUD that sufficient replacement units are being provided in connection with the disposition of the property. The PHA should obtain sufficient value for the units to attain this replacement goal, which ensures that the PHA receives sufficient value for its units and also safeguards the Nation's valuable low-income housing stock. It is worth noting in this connection that the Senate Committee on Appropriations, in Senate Report 112-83 (September 21, 2011) stated, in a discussion of leveraging resources, that "The Committee is concerned that without an infusion of new resources to bring public housing stock into a state of good repair, irreplaceable affordable housing will be permanently lost" (p. 108). The Committee also notes that the public housing stock continues to age, and that the current backlog of capital needs is \$25.6 billion. In this

environment, when disposing of public housing units, PHAs must receive sufficient compensation, after any required retirement of outstanding debt not waived by HUD, from the disposition to replace the dwelling units with other low-income housing units through acquisition, development, or rehabilitation.

The replacement housing may, for example, be public housing units or project-based voucher units. Section 970.17(b)(3) would provide that replacement housing units be developed on another property, that the PHA must have the replacement housing units or land for the new construction of the units identified at the time it submits its request to HUD, and that the PHA provide its financing plan for the replacement units. The disposition of the project must be an arms-length transaction at FMV and 100 percent of the proceeds must be used to acquire, develop, or rehabilitate the replacement units. The proposed rule would revise § 970.17(c), which currently states that the PHA may also dispose of a project if the PHA has otherwise determined the disposition to be consistent with the goals of the PHA, the PHA Plan, and the 1937 Act, to add that the disposition under this section (c) must be in the best interests of the residents and the PHA. In addition, the proposed rule would add an additional condition under this section. Specifically, the PHA may not dispose of a project under this section if the reason for disposition, as determined by HUD, falls under another regulatory section (such as § 970.7(a) or (b)); another law (such as voluntary conversion under section 22 of the 1937 Act (42 U.S.C. 1437t) and required conversion under section 33 of the 1937 Act (42 U.S.C. 1437z-5) or homeownership under section 32 of the 1937 Act (42 U.S.C. 1437z-4)), or an eminent domain taking. HUD would consider the following reasons for disposition to be acceptable under this section: the project meets the criteria for obsolescence under § 970.15; the units will be rehabilitated through mixed-finance development method, and to reduce the number of public

housing units in the project, the criteria under §970.15 or another section of this part must be met; and other reasons determined by HUD to meet this criteria. In addition, proposed § 970.17(d) would revise currently codified § 970.17(d) by clarifying the language of the provision.

Requirements for the Disposition of a Project (§ 970.19). Proposed § 970.19 would require that a project be disposed of for not less than FMV, unless HUD authorizes a disposition for less than FMV under § 970.19(b), which requires that a commensurate public benefit result from the disposition. The statute does not cover the amount that the PHA is required to obtain when disposing of public housing property, but instead appears to leave that element up to HUD regulation. In the case where there are proceeds from the disposition, the statute requires specified uses to be made of the proceeds, that is, retirement of bond debt that originally financed the project unless waived by the Secretary (see 42 U.S.C. 1437p(a)(5)(A)), and, to the extent that other proceeds remain, the provision of low-income housing or to benefit the residents of the public housing agency, or on-site commercial enterprises to serve the needs of the residents (see 42 U.S.C. 1437p(a)(5)(B)). Thus, the statute evidences an intent that the proceeds of disposition inure to the benefit of public housing residents. The statute does not explicitly cover the situation, however, where disposition is for less than FMV and hence there are no proceeds from the disposition to be applied as directed. Instead, that scenario is left to HUD regulation.

HUD believes that in below-FMV dispositions, there needs to be some assurance that the federal investment in public housing is not lost and the purpose of the investment continues to be fulfilled. Hence, the proposed rule would add a new § 970.19(c), while currently codified paragraph (c), which relates to obtaining an estimate of FMV, would be redesignated as paragraph (c)(i). This new paragraph would require that where a PHA disposes of a project at

below FMV on the basis that there is a commensurate public benefit, the PHA execute a use restriction or other arrangement of public record, in a form acceptable to HUD, that will ensure that the property will be used for not less than 30 years for the public use that HUD approved. This period is commensurate with other PIH use restrictions. This proposed new measure would ensure that public funds are being used for appropriate purposes. The use restriction or other similar arrangement must be in a first priority lien position that would survive any other liens or foreclosures. The PHA would be responsible for monitoring and enforcing the use restriction throughout the term of the use restriction. HUD may take enforcement action against the PHA if the PHA fails to enforce the use restriction.

Proposed § 970.19(a) and (b) are substantively similar to currently codified § 970.19(a), with the exception that the definition of commensurate public benefit is moved, to proposed § 970.5.

A new § 970.19(d) would provide that if a PHA is unable to dispose of a project containing obsolete units that is approved for disposition under § 970.17(c)(1) in its “as is” condition despite due diligence and reasonable efforts, as determined by HUD, if requested by the PHA, HUD will approve a demolition of the project, in accordance with § 970.15 so that the PHA can proceed with demolition and then the disposition of only the vacant land comprising the project.

In order to ensure timely action, the proposed rule would require at § 970.19(e) that the disposition shall occur within 2 years of HUD’s approval, unless HUD extends the time in writing. In HUD’s experience, 2 years is usually sufficient time. This time limit is the same as HUD is proposing for demolition (see proposed § 970.15(d)).



The proposed rule would also specifically address dispositions in which the property is transferred for more than one, but less than 30 years, such as by lease. Proposed § 970.19(f) would require the PHA to return the project to either return the property to the public housing inventory, including adding the property again to its ACC and placing a DOT on the property, or submit another disposition or other removal (e.g. demolition, homeownership, voluntary conversion) application, at the end of the temporary period.

Proposed § 970.19(g) would require the PHA to ensure that the use of the property that HUD approved as the commensurate public benefit begin within 2 years of the date of disposition of the project, unless the PHA receives an extension from HUD in writing. This proposal, again, is intended to ensure timeliness in the use of public funds. Current § 970.19(b), which allows for the PHA to pay for the reasonable expenses of disposition and relocation cost for displaced residents, is redesignated § 970.19(h).

Proposed § 970.19(h) and (i) would revise existing § 970.19(c) on obtaining an estimate of FMV and would add a provision on obtaining an estimate of FMV when a project is proposed for disposition via negotiated sale at less than FMV based on commensurate public benefit. In that case, HUD may accept any reasonable valuation of the property, which need not be obtained by hiring an independent appraiser, such as a tax assessor's valuation. Because of the commensurate public benefit being obtained in lieu of FMV, the market valuation is not as critical, so HUD can rely on a less expensive and more easily available form of valuation than an appraisal.

Use and treatment of Proceeds (§ 970.20). The proposed rule would move and revise the content on use of proceeds found in currently codified § 970.19(e) and (f) into a new § 970.20, entitled "Use and treatment of proceeds." The proposed revisions would provide additional

detail on what HUD considers the appropriate uses of proceeds of disposition after the payment of HUD-approved costs of disposition and relocation. According to the 1937 Act, the proceeds are to be used: (1) for the retirement of outstanding debt, unless waived by HUD; (2) to the extent that any proceeds remain, for the provision of low-income housing or “to benefit the residents of the public housing agency”; or (3) leveraging amounts for commercial enterprises appropriate to the needs of the residents. The proposed revisions would provide more detail regarding HUD’s interpretation of “to benefit the residents.”

The proposed new section would provide that uses of proceeds that remain after debt obligations for providing low-income housing could include: modernization of existing projects; development of a project; funding of homeownership units under sections 9, 24, or 32 of the 1937 Act (42 U.S.C. 1437g, 1437v, and 1437z-4, respectively); construction, rehabilitation, and acquisition of units to be used as Section 8 housing, provided that the PHA complies with safe harbors in connection with such construction, rehabilitation, and/or acquisition, and executes a use agreement in a form acceptable to HUD ensuring that the property will be operated exclusively as Section 8 housing for not less than 30 years, roughly commensurate with other use restrictions (along with other requirements, such as compliance with program regulations); benefits to the residents for uses permitted by HUD’s Operating Fund rule; and funding of shortfalls (*but not* new allocations) of vouchers under section 8 of the 1937 Act (42 U.S.C. 1437f), subject to further HUD approval and discretion considering the applicable section 8 statutory, regulatory, and funding requirements. Benefits to the residents (that is, benefits for public housing residents) for which funds could be used include, for example, job training, child care programs, and service coordination. Other housing and benefits to the residents may be

approved by HUD as well. The net proceeds may be leveraged with other funds so long as the net proceeds are used on a pro-rata basis to fund only the approved uses.

The proposed rule would require, in other contexts, expenditures of proceeds for the provision of low-income housing or for the benefit of PHA residents under this section to begin within 2 years from the date of disposition approval and be completed (i.e. entirely expended for the approved use) within 4 years unless HUD approves an extension in writing. The purpose of this proposal is to ensure timely use of public funds for their appropriate purposes, and to prevent banking public funds. These funds are appropriated and approved for particular public purposes, and should be used for those purposes in a timely manner.

The rule would also provide that proceeds generated from dispositions are subject to all laws, regulations, and other requirements applicable to use approved by HUD unless otherwise approved by HUD in writing. Thus, for example, for development, equal opportunity and environmental requirements, requirements pertaining to section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the labor standards provisions of section 12 of the 1937 Act (42 U.S.C. 1437j), may all be applicable. The one exception to this general rule is that where disposition proceeds are used with HUD approval for the development of public housing units, the disposition proceeds will not count toward the total development cost (TDC) limit pursuant to 24 CFR 905.314(c).

If a PHA fails to use proceeds as required, HUD may recapture or require repayment of the proceeds, or take all other remedies available under law. Finally, the rule would require that upon immediate receipt of proceeds, and until expended for an approved use, a PHA must deposit the proceeds into an interest bearing account, subject to a HUD General Depository

Agreement and/or an escrow agreement in a form acceptable to HUD. All accrued interest will be treated as additional proceeds, subject to this section.

Relocation of Residents (§ 970.21). Proposed § 970.21(a) would revise the currently codified § 970.21(a) to include material concerning the written notice to residents who will be displaced, now required at § 970.21(e), with additional details provided. The written notice would have to include a statement that the demolition, disposition, or combined application has been approved and that the action will occur, and a description of the process to relocate the residents. The written notice must be provided through an effective communications means to persons with disabilities in accordance with 24 CFR 8.6 and in the appropriate non-English language to persons with limited English proficiency as needed. This section would also continue to incorporate the requirement that the housing being offered must meet HQS (or such equivalent or successor standard that HUD may adopt) and be in a location “not less desirable” than the housing the resident is being displaced from. The currently codified regulation does not define a “not less desirable” location. Under the proposed rule, a PHA would, in determining comparable housing, also consider the following criteria (in aggregate): neighborhood safety; quality of local schools; accessibility of amenities (e.g., transportation, employment); and exposure to adverse environmental conditions. Relocation associated with demolition and disposition plans must be consistent with the PHA’s obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). In no event shall a PHA commence a demolition or disposition of the building (or a combined action) in which a resident lives until each resident of the building is provided relocation assistance.

Under proposed § 970.21(a)(4), the written notice would include a description of the comparable housing options that the PHA is offering to the resident, including the location of the

housing to public transportation, employment, education, child care, medical services, shopping, and other amenities. The housing may include the types of housing currently codified at § 970.21(a)(1) – (3) (as of the April 1, 2013 edition of the Code of Federal Regulations).

Under § 970.21(a)(5), the notice shall include statements that the PHA shall offer displaced residents comparable housing on a nondiscriminatory basis with respect to race, color, religion, national origin, disability, familial status, or sex, as required by civil rights laws. Under proposed § 970.21(a)(6), the PHA shall offer residents with disabilities comparable housing that includes the accessibility features needed by the resident and located in the most integrated setting appropriate for the resident. The most integrated setting appropriate to the needs of individuals with disabilities is the setting that enables individuals with disabilities to interact with nondisabled individuals to the fullest extent possible, in furtherance of the Supreme Court’s decision in Olmstead v. L.C., 527 U.S. 581 (1999), and pursuant to HUD’s regulations at 24 CFR 8.4(d). The statement shall also include the right of displaced residents to a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, and how to request such an accommodation.

Section 18(a)(4)(B) of the 1937 Act (42 U.S.C. 1437p(a)(4)(B)) requires the payment of “actual and reasonable relocation expenses” of each resident being displaced, as does the current regulation at § 970.21(e)(2). The proposed rule would add more detail to what constitutes “actual and reasonable relocation expenses.” Under proposed § 970.21(a)(7), the PHA would provide for the payment of actual and reasonable relocation costs for each displaced resident, including reasonable accommodations for residents with a disability in accordance with Section 504 of the Rehabilitation Act of 1973, essentially similar to currently codified 970.21(e)(2). The proposed rule would further specify that the PHA shall pay for moving cost assistance, the

payment of a displaced resident's security or utility deposit (or both), at a comparable housing unit (provided that loans or grants made directly to displaced residents for new deposits are not permitted if the PHA's source is either Capital or Operating Funds.) The PHA would pay such deposits directly to the utility company, the landlord, or both, with the resident holding no interest in the funds. Any returns or refunds would go to the PHA directly.

Section 18(a)(4)(D) of the 1937 Act (42 U.S.C. 1437p(a)(4)(D)) provides that a PHA, as a condition of approval of its application, must provide "any necessary counseling for residents who are displaced" as a result of the demolition, disposition, or combined action. Proposed § 970.21(a)(8) would specify that the notice must include a description of the housing counseling services that will be available, including mobility counseling, and how a resident may access those services.

Proposed § 970.21(a)(9) requires that if the provisions of section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)(section 104(d))), referenced in § 970.21(g), apply to the project, the notice required by § 970.21(a) must explain the assistance available under section 104(d), which requires a residential antidisplacement and relocation assistance plan for certain grants.

Proposed § 970.21(b) covers the timing of the notification to residents of the upcoming action. Like currently codified § 970.21(e)(1), proposed § 970.21(b) requires notification to residents at least 90 days prior to the displacement date, except in cases of imminent threat to health and safety. The proposed rule would define displacement date as the earliest date by which a resident who will be displaced by a demolition, disposition, or combined action shall be required to move. A PHA may not issue the notification prior to the date that HUD approves the application. Section 18(a)(4)(A)(iii) of the 1937 Act (42 U.S.C. 1437p(a)(4)(A)(iii)) and the

current regulation at § 970.21(e)(1)(iii) require that each resident who is displaced from housing must be offered comparable housing and must be provided with actual and reasonable relocation assistance. The notice provisions in proposed § 970.21(a) reflect these requirements.

Proposed § 970.21(c)(1) would provide that if a PHA offers a resident comparable housing in the form of tenant-based assistance under section 8 of the 1937 Act, and the resident is unable to lease a dwelling unit during the initial 60-day leasing period provided under the Housing Choice Voucher program, the PHA may either (i) grant one or more extensions to the initial term in accordance with the voucher program regulations at 24 CFR 982.303 as reflected in the PHA's administrative plan; or (ii) provide the resident with another form of comparable housing (e.g. public housing unit or project-based unit under section 8 of the 1937 Act).

Proposed § 970.21(c)(2) would provide that a PHA shall not commence the HUD-approved demolition or complete the HUD-approved disposition of a building until each resident who will be displaced by the action is relocated in accordance with the requirements of this part.

As discussed in this preamble, the proposed rule would allow dispositions at below FMV based on commensurate public benefit. In such a case, if housing is developed on the site of the former project and is income-eligible, proposed § 970.21(d) would provide that income-eligible residents shall be offered the opportunity to return to the site once appropriately-sized units are available for occupancy. As part of its application for this type of disposition, the PHA would provide a plan that addresses how residents will be notified of the opportunity to return; the amount of time residents will have to exercise this opportunity; the source of funds from which the PHA or the new owner will pay the moving costs for moving the displaced residents back into the new units; and the process for selecting displaced residents who will be offered an opportunity to return (for example, lottery) if the number of new public housing units cannot

accommodate all lease-compliant displaced residents at appropriate bedroom sizes. A displaced resident is “lease-compliant” for this purpose if the displaced resident (including household members whose names appear on their public housing lease) has not engaged in serious or repeated violations of material terms of the lease that result, or could result, in good cause to evict or terminate the assistance;

Proposed § 970.21(e) would provide that if a resident who will be displaced by a demolition, disposition, or combined action, refuses to move or otherwise rejects the PHA’s offer(s) of comparable housing and relocation counseling and advisory services despite the PHA’s due diligence, the PHA may evict the tenant under state law as long as the PHA exercises due diligence in making continued efforts to offer the resident comparable housing and relocation counseling.

Proposed § 970.21(f) would specify some of the sources of funding that may be used for relocation. Proposed § 970.21(f) would state that sources of funding for relocation expenses include gross proceeds a PHA receives under this part, Capital Funds, section 8 administrative fee funding (where section 8 assistance is offered as comparable housing), or other federal funds available for this purpose.

Proposed § 970.21(g) would specify that if federal financial assistance under the Community Development Block Grant (CDBG) program (42 U.S.C. 5301 et seq.); the Urban Development Action Grant (UDAG) program (42 U.S.C. 5318 et seq.); or the HOME Investment Partnerships (HOME) program (42 U.S.C. 12701 et seq.) is used in connection with the demolition of lower-income dwelling units, or conversion of such units to a use other than lower-income dwelling units, the project is subject to section 104(d) of the HCD Act of 1974, including



the relocation payment and one-for-one replacement provisions as provided at 24 CFR part 42, subpart C. Proposed § 970.21(h) states that the URA does not apply to this part.

Costs of Demolition and Relocation of Displaced Residents (§ 970.23). Proposed § 970.23 would add provisions and clarifications to currently codified § 970.23. Proposed § 970.23(a) would clarify that a PHA may pay for relocation expenses with non-Federal funds or any eligible HUD funds, which may include Capital Funds. Proposed § 970.23(b) would provide that the PHA may pay for the costs of demolition with non-Federal or any eligible funds, including Capital Fund. Proposed § 970.23(c) would provide that where HUD has approved the demolition of a project and the proposed action is part of a program under the Capital Fund Program (24 CFR part 905), that the expenses of the demolition and of relocation of displaced residents must be included in the Capital Fund Submission pursuant to section 9(d) of the Act (42 U.S.C. 1437g(d)) or other eligible HUD funds.

Required and Permitted Actions Prior to Approval (§ 970.25). Proposed § 970.25 would update and clarify currently codified § 970.25. In addition to updating language, proposed § 970.25(a) would clarify that HUD permission to take any actions related to demolition, disposition, or a combined action prior to HUD approval of the application, may only be granted in writing, and that a PHA may not delay or withhold maintenance on a project in such a way as to cause or allow it to meet the demolition criteria under § 970.15.

The consolidation of occupancy requirements would be covered under proposed § 970.3(b)(18), and so would be removed from currently codified § 970.25(b) by this proposed rule. Proposed § 970.25(b) would provide that a PHA may lease public housing units at turnover while HUD is considering approval or after HUD has approved its application subject to the following conditions: the units are in decent, safe, and sanitary condition; the PHA determines

that due to community housing needs or for other reasons consistent with its PHA Plan, leasing turnover units is in the best interests of the PHA, its residents, and community; and residents of units leased during such a period are provided with the relocation assistance required by proposed § 970.21. Where units are leased under this provision, the PHA's Operating Fund continues to be calculated as stated in 24 CFR part 990 (Public Housing Operating Fund).

De Minimis Exception to Demolition Application Requirements (§ 970.27). Proposed § 970.27 is essentially the same as the current codified section. The basic requirements – that the demolition be limited to the lesser of 5 dwelling units or 5 percent of the total number of units owned by the PHA, and that the space occupied by the demolished units be used for meeting the needs of PHA residents, or, alternatively, that the units were beyond repair – are found at proposed § 970.27(a) and (c).

The explanation of the 5-year period currently found at § 970.27(c) would be moved to proposed § 970.27(b). The reporting and recordkeeping requirements would be updated at proposed § 970.27(e).

Proposed § 970.27(f) would clarify that any resident displaced by de minimis demolition would be entitled to housing assistance in accordance with federal laws and requirements, which include the PHA's Admissions and Continued Occupancy Policy (24 CFR part 966), the PHA's section 8 Administrative Plan (24 CFR part 982), PHA Plan requirements (24 CFR part 903), and, except where the PHA provides the residents to be displaced with another public housing unit from its inventory, the URA. If CDBG or HOME funds are involved, the displaced resident shall be provided assistance under section 104(d) of the Housing and Community Development Act of 1974, where applicable.

Criteria for HUD Disapproval of Demolition or Disposition Application (§ 970.29).

Proposed § 970.29 would revise the currently codified § 970.29, specifically, the provision that an application can be rejected if it is clearly inconsistent with the PHA Plan. The section would explicitly state that failing to satisfy the application requirements is grounds for disapproval. The proposed rule would also specify in particular the civil rights related requirements under § 970.12. There are minor technical updates to language.

Effect on the Operating Fund Program and Capital Fund Program (§ 970.31). The proposed rule would remove § 970.31 on replacement units as this material will be moved to the Capital Fund rule at 24 CFR part 905. Currently codified § 970.33, which states the applicability of the Operating Fund program (24 CFR part 990) and the Capital Fund program (24 CFR part 905), would be redesignated as § 970.31.

Demolition Due to Emergency, Major Disaster, or Accidental Loss (§ 970.33). Proposed § 970.33 would codify HUD's practice in cases where PHAs must demolish housing due to an emergency or natural disaster. These terms are defined at proposed § 970.5. An "emergency" is defined as it is in section 102(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1)) (Stafford Act). "Major disaster" is defined similarly to the definition in the Stafford Act (see 42 U.S.C. 5122(2)), with the addition that it includes any natural catastrophe or, regardless of cause, fire, flood, or explosion, that causes damage of sufficient severity or magnitude to warrant demolition to alleviate the danger, loss, hardship, or suffering caused thereby. In such a case, if the PHA rebuilds the same number of dwelling units or non-dwelling structures that comprised the demolished project, the demolition (and any additional demolition required to carry out the redevelopment) shall not be subject to 24 CFR part 970. If the PHA rebuilds less than all of the demolished structures or the project, the PHA

shall submit a demolition application under this part within one year of such demolition to formalize and request official HUD approval for the action under this part.

Removal of All Projects in the PHA's Public Housing Inventory (§ 970.35). Proposed § 970.35 would be added to address the increased frequency of such actions and to clearly codify the PHA's responsibilities in this case, as well as to assist HUD and HUD field offices in monitoring and enforcing these requirements. In cases where a disposition application proposes to remove all structures and land in a PHA's public housing inventory and the PHA has no plans to develop any additional projects, once the disposition is complete, the PHA shall not expend any remaining Operating Funds, including operating reserves, other than for purposes related to the close-out of its public housing inventory, including audit requirements required by this section. Any remaining Operating Funds (including operating reserves and any unspent asset-repositioning fees received pursuant to 24 CFR 990.190(h)) would be required to be returned to HUD within 90 days of the date of disposition of the project. The PHA may spend no more of its Capital Funds other than, with HUD approval, amounts required to close out contract obligations incurred prior to HUD's approval of the disposition and amounts required to address imminent health and safety issues that arise at the project prior to completion of the disposition transaction.

If the disposition was approved at below FMV based on commensurate public benefit, prior to expending any Capital Funds on the project for the purposes identified above, the PHA must notify HUD in writing of the planned expenditure of Capital Funds so that HUD can determine if any changes are necessary to the terms of its commensurate public benefit and/or if the disposition price should be adjusted to reflect the expenditure of funds; no Capital Funds may be expended after the date of disposition of the project and any remaining Capital Funds

shall be returned to HUD within 180 days of such date of disposition. The PHA shall be ineligible to receive any Capital Funds (replacement housing factor funds) under 24 CFR 905.10(i), and any funds issued under this section shall be recaptured by HUD.

Within 60 days after the disposition of all projects in its inventory, the PHA shall dispose of all equipment in its inventory that was acquired in whole or in part with 1937 Act funds in accordance with 24 CFR 85.32(c) (which addresses equipment acquired under a grant or subgrant), pursuant to a plan acceptable to HUD; and within 90 days of the date of disposition, the PHA must have an independent audit conducted on the close-out of its public housing inventory.

Reports and Records (§ 970.37). Proposed § 970.37 would revise currently codified § 970.35, “Reports and records” to strengthen HUD’s oversight and monitoring of demolition and disposition actions. The information on demolition and sale or lease contracts currently found at § 970.35(a)(1) and (2) would be retained at proposed § 970.37(a)(1) and (2), and a new paragraph (a)(3) would be added.

This section would revise currently codified § 970.35 to require a report, in a form and frequency to be prescribed by HUD, until HUD determines that the report no longer needs to be submitted, containing the following information: (i) a description of resident relocation and timetable, including the number of families actually relocated by bedroom size; the types and location of comparable housing provided to each family; demographic information on family size, race, national origin, sex, and disability of relocated residents; reasonable accommodations that were provided in connection with the comparable housing; units to which residents were relocated that meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and HUD’s implementing regulations at 24 CFR part 8 or that otherwise contain accessible

features; the status of the Opportunity to Return Plan, including residents who express an interest in the plan; and the comparable housing offered to families that include a member with a disability that was located in a non-segregated setting, or, if non-segregated housing was not offered, an explanation of why the setting that was offered was the most integrated setting appropriate for the family, that is, the setting that enables the family to interact with non-disabled persons to the fullest extent possible and have access to community-based services; (ii) a description of the PHA's use of the proceeds of disposition by providing a financial statement showing how the gross and net proceeds were expended by item and dollar amount, as approved by HUD; (iii) a description of any remaining disposition proceeds, including current balance (plus interest), bank information of where such proceeds are being held, and plans for expending such proceeds for the use approved by HUD within the required timeframe; (iv) for dispositions approved by HUD at less than FMV based on commensurate public benefit, a description of the current use of the property (e.g. owner, number of housing units developed), and a statement of how the property is being used for the HUD-approved use; (v) a description of whether any project-based voucher contracts under section 8 of the 1937 Act have been executed on a former public housing property approved for disposition and/or at housing developed, acquired, or constructed with disposition proceeds; and (vi) evidence that an audit has been conducted on the demolition, and/or disposition action within 3 years of completion of the demolition and/or disposition action. In addition, as in the current regulation, HUD would be able to ask for such additional information as HUD may require from time to time.

#### **B. Retention of Projects by PHAs under 24 CFR part 85.**

The proposed rule would add a subpart B to 24 CFR part 970, to allow PHAs and other owners of public housing to retain public housing property, including dwelling units and

appurtenant personal property and equipment that were purchased with 1937 Act funds, without the use restrictions under the ACC and DOT. Section 18 does not apply to cases where a PHA retains property rather than disposing of it to another party. In the case of retention, 24 CFR part 85 applies, particularly, § 85.31.

Definitions (§ 970.39). Proposed § 970.39 would provide that the definitions contained in § 970.5 would apply to subpart B.

Applicability (§ 970.41). Under proposed § 970.41, disposition in this case would be under 24 CFR 85.31. Under proposed § 970.41, the PHA may retain title to property that is no longer needed provided that the PHA requests and is approved by HUD to retain the property. In order to approve a request under this section, HUD will generally require the PHA to compensate HUD for the federal government's equity in the project (computed by applying HUD's percentage of participation in the cost of the original purchase to the FMV of the property and subsequent modernization), but the PHA could request an exception to this repayment requirement, for good cause, in accordance with 24 CFR 85.6(c). If HUD finds the PHA has shown good cause for retaining the project under this section, HUD will release the ACC and DOT on the project. HUD's approval may require the PHA to enter into certain use restrictions or may impose other requirements to ensure that the property is used for the HUD-approved purposes for a certain length of time.

Removal of a project from public housing without a transfer to a third party (§ 970.43). Proposed § 970.43 would clarify when a project can be removed from public housing without a transfer to a third party. HUD's regulations at 24 CFR 85.31 provide that except as otherwise provided by federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee shall not dispose of or encumber its title or other

interests. Proposed § 970.43 (a) would provide that when real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from HUD. Section 18 of the 1937 Act and subpart A of part 970 covers the procedures that PHAs must follow if they choose to sell or otherwise transfer title of the property.

Section 85.31 of HUD's regulations in 24 CFR part 85 permits a PHA to retain title of real property that is no longer needed for its originally authorized purpose, provided the PHA requests and is approved by HUD to retain the property. Proposed § 970.43(b) would provide that HUD will generally require the PHA to compensate HUD for the federal government's equity in the project (computed by applying HUD's percentage of participation in the cost of the original purchase or construction to the FMV of the property and subsequent modernization), but the PHA could request an exception to this repayment requirement, for good cause, in accordance with 24 CFR 85.6(c). If HUD finds the PHA has shown good cause for retaining the project under this section, HUD will release the ACC and DOT on the project. HUD's approval may require the PHA to enter into certain use restrictions or may impose other requirements to ensure that the property is used for the HUD-approved purposes for a certain length of time.

Specific Criteria for HUD Approval of Requests (§ 970.45). Proposed § 970.45 would list the specific criteria for HUD approval of retention of public housing without use restrictions under subpart B. In addition to showing that the project is no longer needed for public housing and there is good cause for the action, for projects that include dwelling units, HUD will require compliance with the regular disposition regulations under part 970, subpart A, particularly § 970.17. To determine applicable requirements, references to "disposition" in subpart A shall mean "retention of property" for subpart B. The PHA must also show that retention of projects with dwelling units will leverage the property so that the PHA can obtain financing to address



deferred capital needs and otherwise better maintain and operate the units as low-income housing. In addition, where there is resulting resident displacement, the PHA must comply with the relocation requirements in subpart A of this part. Vacant land may be retained (for example, as green space) as may nondwelling structures, if the structure is no longer needed by the PHA.

Proposed § 970.45(c) would contain the applicable application requirements for retention requests. These application requirements are proposed to be parallel to the application requirements under subpart A found in proposed § 970.7(c), with the omission of those items that would not apply in the case of retention. Thus, § 970.7(c)(4), a description of the specific action proposed; § 970.7(c)(7)(ii), a description of the comparable housing resources to be provided to any residents to be displaced; § 970.7(c)(9), related to the offering to resident organizations; § 970.7(c)(10), the name of the acquiring entity in the case of dispositions; §§ 970.7(c)(11) – (13), having to do with disposition proceeds, FMV, and commensurate public benefit; and § 970.7(c)(20), requiring a description of the race, color, religion, sex, national origin, familial status, and disability status of any residents who will be displaced.

On the other hand, elements that are unique to property retention are proposed to be added to the application requirements. These include a description of the future ownership structure of the project; the anticipated future use of the project and the proposed length of time the PHA will maintain the former project for the anticipated future use; and, in the case of displacement of residents, if any, a certification that the PHA will comply with the URA (which does not apply under 42 U.S.C. 1437p and subpart A; instead, there are specific relocation requirements under both the statute and regulation).

### **Revisions to Conversion Regulations**

HUD is also proposing to revise the definition of “conversion” in the part 972 regulations that cover both voluntary and required conversion of public housing to tenant-based assistance to more accurately reflect what “conversion” means in the relevant statutory sections (for voluntary conversion, section 22 of the 1937 Act (42 U.S.C. 1437t); for required conversion, section 33 of the 1937 Act (42 U.S.C. 1437z-5). Currently, the regulations at 24 CFR 972.103 and 972.203 (for voluntary and required conversion, respectively) define conversion as the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the PHA. While it is true that under the statutes the residents of a project undergoing conversion may be provided with alternate housing including project-based assistance, the statute provides that the conversion is only from public housing to tenant-based assistance. Therefore, HUD is proposing to revise these definitions accordingly to remove the reference to project-based assistance.

HUD notes in this context that the voluntary conversion rule as currently codified at 24 CFR 972.212(d) states that HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both. This is a regulatory provision not found in the voluntary conversion statute, section 22(f) of the 1937 Act (42 U.S.C. 1437t(f)), although that statute has a clause granting discretion to the Secretary in this area (“[t]o the extent approved by the Secretary”). HUD notes as a point of clarification that this statement is only true to the extent that use of Capital or Operating funds for this purpose is specifically provided for in appropriations acts, and that there is currently no appropriation, outside of the limited Rental Assistance Demonstration under the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112–55, approved November 18, 2011), that allows either Operating or Capital fund appropriations to be used for this purpose. However,

HUD is retaining this language in its regulations in case Congress chooses to grant HUD this ability in an upcoming appropriation.

### **Specific Questions for Public Comment**

HUD welcomes public comments on any issue relevant to this rulemaking. HUD is also interested in public comments on the following specific subjects:

- The proposed definition of “commensurate public benefit” in proposed § 970.5;
- Whether or not the definition of “disposition” in proposed § 970.5 should include a PHA’s transfer to the PHA’s own nonprofit instrumentality;
- The requirements for a PHA to amend an existing approval under proposed § 970.7(e).

For example, should the PHA be required to get a board resolution approving the amendment request? Should the PHA be required to consult residents and local government officials on the amendment request? Should it depend on whether the change is minor or significant?

- The circumstances under which a PHA would want to only demolish structures on public housing property under proposed § 970.15 without also proceeding with a disposition of the vacant land after demolition (considering the land would remain under the conventional ACC and DOT and could only be used for public housing purposes, e.g., to construct new public housing units), and there is limited funding for such purposes;
- In those instances where PHAs seek to both demolish and dispose of public housing projects as part of the same request, when would it be appropriate for HUD to allow a PHA to demolish obsolete structures (with HUD funds) only to immediately seek to dispose of the underlying vacant land, and whether HUD should instead require the PHA

to dispose of the obsolete structures in their “as-is” obsolete condition and have the acquiring entity agree to demolish or otherwise dispose of or use that property?

- The criteria HUD should use in determining if a project is obsolete as to location under § 970.15(a)(1)(ii) and whether HUD should require the PHA to simultaneously submit a disposition application in these instances;
- For HUD to approve disposition under proposed §970.17(b) for acquisition of other properties that will more efficiently or effectively operate as low-income housing, how far along must the development/acquisition of the replacement housing be? Is it enough that the PHA be irrevocably committed for the replacement units? Alternatively, is it enough that the PHAs have permanent financing in place and the actual replacement units identified? If the replacement units are public housing units, should a threshold requirement for approval under this section include those replacement units having met the applicable site and neighborhood standards? If the replacement units are not public housing but other low-income housing units (e.g. project-based Section 8 units), how much involvement should HUD have in the development of those units to assure that they will be more effectively and efficiently operated as low-income housing than the units proposed for disposition?
- For HUD to approve disposition under proposed §970.17(b) for acquisition of other properties that will more efficiently or effectively operate as low-income housing, this rulemaking proposes that the minimum replacement amount be 75 percent of the units (all units housing families displaced by the action must be replaced). HUD would also consider a minimum of 50 percent, and would be interested in public comment on this issue;

- Are there any additional factors HUD should consider when approving a disposition for less than FMV under § 970.19(b)? Should the definition of commensurate public benefit under §970.5 be amended?
- In what extent of planning should a PHA engage under § 970.25 without receiving HUD approval under section 18? For instance, should a PHA issue RFQs or RFPs that assume HUD will approve a full or partial demolition and/or disposition of the project?
- In order to preserve and make most efficient use of appropriated funds, should HUD limit tenant protection vouchers (TPVs) to fewer than the number of occupied units being replaced in cases where the PHA can provide assistance from funds already allocated to it?

#### **IV. Findings and Certifications**

##### **Paperwork Reduction Act**

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

HUD currently collects information related to this rule through OMB PRA package 2577-0075 (which expires in August 2014). That information package includes submission requirements for the current 24 CFR part 970 rule, as well as submission requirements for 24 CFR part 972 (required and voluntary conversion), 24 CFR part 906 (homeownership), and eminent domain takings and de minimis demolitions (both exempt from Section 18 and the

requirements of 24 CFR part 970). HUD will revise this PRA package 2577-0075 to reflect the changes made to this rule once the final version of this rule is published in the FR.

HUD estimates the burden increase on PHAs from this rule as 161.75 hours. HUD estimates the average cost to the PHA (staff salary) for these hours to be approximately \$30 per hour. The modest increase from the current rule will benefit PHAs, HUD, and public housing residents and in several general ways, including:

(1) Faster application processing: HUD cannot process incomplete or substantially deficient applications. By clearly indicating (at a modest increase) the application submission materials that PHAs are required to provide about their proposed disposition and/or demolition actions, HUD staff will be less likely to reject an application for being incomplete or deficient. In addition, HUD staff will be able to more quickly process an application that meets the clearer requirements of this revised rule. Finally, HUD staff will be able to complete its civil rights compliance review in a much more streamlined and expeditious manner;

(2) Better protection for public housing residents—in assuring PHAs comply with all applicable requirements related to resident relocation and consultation;

(3) Better information for monitoring: HUD staff has an ongoing obligation to assure PHAs comply with the terms and requirements of Section 18, this revised rule, and the HUD approval letter. Sometimes these requirements extend for 30+ years (use restrictions on land, receipt and use of proceeds). Requiring PHAs to submit annual reports to HUD will vastly assist HUD in its monitoring efforts.

Specific explanations for the increase in burden hours are as follows:

- 24 CFR 970.3(b)(5), (7), (9), and (18): HUD is clarifying that although these actions are exempt from Section 18 and the “normal” submission requirements of 24 CFR 970.7,

HUD approval is nevertheless required and this requires a very modest PRA submission requirement;

- 24 CFR 970.3(b)(10): HUD is clarifying that although these eminent domain actions are exempt from Section 18 and the “normal” submission requirements of 24 CFR 970.7, HUD approval is nevertheless required and this requires a PRA submission requirement as is currently captured in PRA package 2577-0075);
- 24 CFR 970.3(c)(7): HUD is requiring PHAs to submit modestly more information about their relocation plans to HUD. The current rule requires PHAs to keep their relocation plans on file so the increased burden is minimal. This information will also assist HUD in doing a quicker civil rights compliance review;
- 24 CFR 970.7(c)(8): HUD is requiring PHAs to submit modestly more information about their resident consultations to HUD, including communication to persons with disabilities. This information will also assist HUD in doing a quicker civil rights compliance review;
- 24 CFR 970.7(c)(10) and (15): HUD is requiring PHAs to submit a legal opinion related to the acquiring entity (if applicable with dispositions) and outside financing (if applicable with CFFP, OFFP, or EPC). The legal opinion may be done by in-house PHA counsel or outside counsel. The purpose of this is to assure PHAs are aware of the legal implications of these disposition requirements;
- 24 CFR 970.7(c)(13): In the case of disposition proposed at below FMV based on commensurate public benefit in accordance with § 970.19, HUD is clarifying the information that PHAs are required to submit including: (i) A detailed description of any housing that will be located on the property, including the number of units, bedroom

sizes, accessibility, affordability, and priorities for displaced residents; (ii) The proposed length of time in which the acquiring entity will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g., number of affordable units) arising from proposed disposition and the FMV of the property in determining if a period of less than 30 years is acceptable); (iii) The plan to implement the opportunity to return requirement for existing residents' as outlined in § 970.21(d); and (iv) The proposed legal documentation (e.g., use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use. This information is necessary for HUD to fully evaluate and review the "opportunity cost" of a PHA not disposing of public housing property at its FMV and using the proceeds for authorized purposes under the statute. HUD is currently processing applications in a way that requests much of this information. This section of the proposed rule makes these requirements clearer and more transparent;

- 24 CFR 970.7(e)(1): HUD is clarifying that PHAs must request HUD approval to amend any aspect of an approved demolition/disposition application;
- 24 CFR 970.15(a)(1)(i): HUD is requiring that obsolescence be verified by an independent architect or engineer not employed by the PHA. PHAs are already required to submit supporting information about obsolescence, so this burden reporting increase is minimal in that it just requires the submission be prepared by a professional other than the PHA staff;



- 24 CFR 970.17(b)(3): HUD is requiring documentation on its replacement housing plan to assure the PHA meets the requirements of this section, as newly implemented by this rule revision, including information on the financing plan, etc., for the replacement units;
- 24 CFR 970.37(a)(3): To assure continued compliance with all statutory and regulatory requirements, HUD is reserving the right to require PHAs to submit reports in the form and frequency required by HUD. The purpose of this is to assist HUD with monitoring these actions (there has been a vast increase in OIG investigations and findings related to approved demolition and disposition actions). While this section is one of the largest increases in the reporting burden in this proposed rule, HUD thinks it is justified.

However, the rule is written in a way that allows HUD to implement this and reduce the burden on some or all PHAs. For instance, HUD could further implement this in a way to require reporting under this section at a frequency of less than 1 time per year (e.g., on an as-requested basis). In addition, HUD could revise/reduce/eliminate this burden, for instance, for small PHAs, per OMB's other comment;

- 24 CFR 970.45(a): HUD is requiring PHAs to submit documentation on assuring that it is justified, under these HUD criteria, to retain property free of federalized public housing restrictions (e.g., evidencing good cause) under the new subpart B.

This information, like currently required information, will be collected via on-line application and reviewed by HUD's Special Application Center (SAC) to ensure that PHAs meet the statutory and regulatory requirements necessary for HUD to approve inventory removal actions. HUD approval is necessary prior to PHAs removing their public housing property in order to protect the Federal interest in the public housing property under the ACC and Declaration of Trust. This information is also collected so that HUD has an accurate database of

Federal public housing inventory and so the HUD Field Office can effectively monitor the implementation of the removal action.

The burden of the information collections in this rule is estimated as follows:

**REPORTING AND RECORDKEEPING BURDEN:**

Section Reference	Number of Respondents	Number of Responses Per Respondent	Estimated Average Time for Requirement (in hours)	Estimated Annual Burden (in hours)
970.3(b)(5) PHA request for HUD approval for agreement related to operation of public housing	25	1	.15	7.5
970.3(b)(7) PHA request for HUD approval for agreement of leasing of project	5	1	.15	2.5
970.3(b)(9) PHA request for HUD approval for easements related to operation of public housing	25	1	.15	7.5
970.3(b)(10) Eminent Domain	7	1	2	14
970.3(b)(12) Dispositions for property developed pursuant to 24 CFR 905.604	20	1	2	40
970.3(b)(13) De Minimis Demolition	15	1	2	30
970.3(b)(16) Demolitions due to disaster	8	1	1	8
970.3(b)(17) De Minimis Dispositions	3	1	.15	4.5
970.3(b)(18) Occupancy Consolidation approval	10	1	.15	1.5
970.7(c)(1) Certification authorized in PHA Plan	150	1	.05	7.5
970.7(c)(2) Description of property	150	1	.10	15
970.7(c)(3) Vacant units	100	1	.05	5
970.7(c)(4) Description of action proposed	150	1	.15	22.5
970.7(c)(5) General Timeframe	150	1	.05	7.5
970.7(c)(6) Justification for action	150	1	1	150
970.7(c)(7) Relocation Certification and plan	100	1	1	100
970.7(c)(8) Resident Consultation Description	150	1	1	150
970.7(c)(9) Offer to sell to residents or exception to offer to sell (disposition only)	100	1	.10	10
970.7(c)(10) Legal Opinion as to acquiring entity (disposition only)	100	1	.05	5
970.7(c)(11) Fair market value of property (disposition only)	100	1	.10	10

970.7(c)(12) Estimates of the gross and net proceeds to be realized and proposed uses (disposition only)	100	1	.45	45
970.7(c)(13) Proposed commensurate public benefit in accordance for below FMV disposition (disposition only)	70	1	1	70
970.7(c)(14) Debt Waiver (disposition only)	100	1	.05	5
970.7(c)(15) Legal Opinion as to other debt financing	50	1	.05	2.5
970.7(c)(16) Board Resolution	150	1	.05	7.5
970.7(c)(17) Local government consultation	150	1	.10	15
970.7(c)(18) Environmental review	150	1	.10	15
970.7(c)(19) Civil Rights Compliance Certification	150	1	.15	22.5
970.7(c)(20) Civil rights description of residents	150	1	.50	50
970.7(c)(21) Certification will comply with HUD approval	150	1	.05	5
970.7(c)(22) Additional requested information	100	1	.50	50
970.7(e)(1) Amendments requests	100	1	1	100
970.7(e)(2) Recession requests	5	1	1	5
970.35 Removal of all units in a PHA's inventory, HUD approvals, and audit	10	1	2	20
970.37 Record-keeping and reporting requirements	250	1	1	250
970.43 Requirements for HUD approval under subpart B	5	1	2	20
Total Paperwork Burden for the New Rule	1483			
Total Burden from Previous Rule (24 CFR part 970)	1321.25			
Total additional burden as a result of this rule	161.75			

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; and
- (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 rule. Comments must refer to the proposal by name and docket number (FR-5563) and must be sent to:

HUD Desk Officer  
Office of Management and Budget  
New Executive Office Building  
Washington, DC 20503  
Fax: (202) 395-6947

and

Reports Liaison Officer  
Office of Public and Indian Housing  
Department of Housing and Urban Development  
451 7th Street, SW  
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> web site can be viewed by other commenters and interested

members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

#### Executive Order 12866 – Regulatory Impact Analysis

At the outset, it is determined that while the proposed rule is a significant regulatory action, it is not economically significant. The rule addresses programmatic concerns to an existing regulation, clarifies ambiguous language in program regulations, strengthens internal controls, and facilitates the full implementation of the demolition and disposition processes. To the extent that this proposed rule would alter the previous demolition/disposition requirements, it would do so in ways that are likely to leave the economic impact mostly unchanged.

Notwithstanding, the proposed rule would marginally add to the administrative burden associated with added oversight and compliance and would generate some costs. Housing authorities and other program participants would also benefit from the added clarity in the demolition and disposition regulations. These program clarifications would also certainly translate into some cost savings. On average, HUD's special application center (SAC) estimates that the total additional administrative burden as a result of this rule is 162 hours per application per year. Each year, the center receives between 150 and 200 applications for demolition and or disposition. If we assume that the average hourly rate is \$70, the total compliance cost would be between \$1.70 million and \$2.27 million a year.

In regards to the above, it is concluded that this proposed rule is not a major rule under Executive Order 12866 and OMB Circular A-4 as it would not result in transfers of funding to and among stakeholders of more than \$100 million per year.

#### Background

HUD has promulgated a regulation, 24 CFR part 970, detailing the administrative steps required to perform demolition/disposition activity in accordance with the 1937 Act, as authorized under section 18 of the 1937 Act, 42 U.S.C. 1437p. A revision to 24 CFR part 970 was published in the Federal Register on October 24, 2006, and took effect on November 24, 2006. A correction to the revised 24 CFR part 970 was published in the Federal Register on January 23, 2008.

Although demolition/disposition activity has always been permitted, HUD and its business partners have begun to actively pursue it as a management strategy option in the last twenty years with the HOPE VI program. This is due to the realization that some developments have difficulties associated not only with physical deterioration of the housing stock, but also with the overall condition of the community surrounding the public housing development subject to demolition or disposition. It is also true that a large portion of the housing now being proposed for demolition/disposition was built in the late 1940s and early 1950s, and was built to a standard that is no longer acceptable for the general public.

Currently, demolitions and dispositions are approved based on certification by the public housing agency (PHA) that certain conditions are met. About 150,000 of the 1.4 million public housing units available in 1989 have been demolished, converted, or disposed of. The program would continue to lose thousands more units every year as properties continue to deteriorate. Based on the HUD's 2010 Capital Needs in the Public Housing Program study, there is no sign that this trend will change anytime soon. This Congressionally-funded study estimated that the aggregate national capital backlog exceeds \$25.6 billion—or, \$23,365 per unit—in the public housing portfolio alone.<sup>3</sup>

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<sup>3</sup> [http://portal.hud.gov/hudportal/documents/huddoc?id=PH\\_Capital\\_Needs.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf)

### Costs and Benefits.

The inception of this proposed rule does not come from a perceived market failure, but rather, from the desire to strengthen and streamline the demolition and disposition processes to reflect changes that have occurred in the public housing program over the last 20 years. As such, while the proposed rule would marginally add administrative burden, this proposed rule would not have any significant financial or cost incidence on stakeholders, but it would create greater clarity regarding the demolition and disposition process. The rule adds increased clarity and guidance to assist PHAs in determining when a demolition and/or disposition may be appropriate for their public housing inventories (e.g., so a PHA would be less likely to put the time into preparing and submitting an application to HUD that would not meet the criteria necessary for HUD approval and thus would not waste its or HUD's staff time and resources. Based on the clarified and new guidance in the rule, some PHAs may sometimes opt not to apply for demolition/disposition and instead pursue other HUD tools—e.g. CFFP financing—for their public housing stock);

The rule adds increased clarity and guidance on what HUD will require to approve an application submitted by a PHA (e.g., HUD will re-do the paperwork burden—HUD form—to make the application easier to fill-out by PHAs. Applications submitted by PHAs will be more likely to be approved by HUD because PHAs will be better able to show that they are meeting the applicable HUD criteria. Further, HUD's review time will likely be significantly reduced, a cost benefit to both PHAs and HUD).

On average, HUD's SAC estimates that the total additional administrative burden as a result of this rule is 162 hours per application per year. Each year, the center receives between 150 and 200 applications for demolition and or disposition. If we assume that the average hourly

rate is \$70, the total compliance cost would be between \$1.70 million and \$2.27 million a year.<sup>4</sup>

The proposed rule requires that the determination of obsolescence be found by an independent (that is not a regular employee of the PHA) architect or engineer.

In addition, units that are demolished or disposed of do not receive full funding under the public housing operating and capital funds. Under the public housing program, these units receive a proration and under the capital funds, they receive replacement housing factor funds. Funds retained under the capital fund program are redistributed to PHAs (including the applying PHA) by formula. The same units removed from the inventory and the PHA will no longer receive operating funds for those units, but the PHA will also not have any operating or maintenance expenses for those units.

#### Transfers.

The proposed rule would create very little additional financial flux. It is likely that the proposed rule may generate up to \$2.23 million in additional compliance costs. These costs would constitute transfers to architects, engineers, lawyers, accountants, etc. For example, the proposed rule requires that the determination of obsolescence be found by an independent (that is not a regular employee of the PHA) architect or engineer.

#### Regulatory Flexibility Act

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

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<sup>4</sup> The Congressional Budget Office (CBO) reports that the average total compensation for a federal government employee with a Master's Degree was \$65.30 in 2010 or \$70 adjusted for inflation in 2013. CBO, comparing the Compensation of Federal and Private-Sector Employees, January 2012, available at <http://www.cbo.gov>.



impact on a substantial number of small entities. This proposed rule would not change existing requirements applicable to demolition and disposition of public housing, but would clarify and include additional detail regarding such requirements, to assist those PHAs that seek to demolish or dispose of public housing fully meet these requirements.

The rule is voluntary. PHAs may choose to continue to retain all of their current public housing property and operate and maintain it in accordance with all public housing requirements (and obtain all available HUD funding to do this). For those entities that choose to demolish or dispose of public housing units, as discussed in Section III of this preamble, while the proposed rule would add marginally to administrative burden associated with increased oversight and enhanced compliance, the proposed rule would also generate savings through the greater clarity brought to existing requirements, as well as relieve the PHAs of the cost associated with the preexisting legal requirement to maintain all of their residential units in a condition that is decent, safe, sanitary, and in good repair (24 CFR 5.703). Additionally and importantly, the proposed rule does not alter the exemption from the annual PHA Plan requirements that are applicable to qualified public housing agencies, which are small agencies, which significantly reduces the administrative burden associated with demolishing or disposing of property.

For those PHAs that choose to demolish or dispose of their public housing units, data shows that relatively few are small PHAs and the economic impact on those PHAs is not significant. Between January 2009 – January 2014, HUD received approximately 930 demolition and/or disposition applications from PHAs (an average of 186/year). Of these approximately 930 applications, approximately 136 were submitted by PHAs that are currently small PHAs (PHAs with inventories of 50-249 public housing units) and approximately 16 applications were submitted by PHAs that are currently very small PHAs (PHAs with inventories

of 1-49 of total public housing units) (note that some of these PHAs may have been large PHAs at the time of the application). Only 23 small and very small PHAs submitted more than one application during this period. Thus the demolition and/or disposition applications submitted by small and very small PHAs over the past 5 years represent only about 16.3 percent of all applications received. There are approximately 2,310 small or very small PHAs nationwide out of 3,089 total PHAs, and thus the percentage of all small or very small PHAs submitting applications over the last 5 years is only 6.6 percent of all small or very small PHAs, and only 4.9 percent of all PHAs. Thus, there are not a substantial number of small entities involved.

As noted in the Regulatory Impact Analysis, the average cost to PHAs is \$70 per hour, and the average number of hours per application is 162, resulting in an average cost of \$11,340. The average 2013 budget of small and very small PHAs is approximately \$104,230 in Capital Funds and \$197,159 in Operating Funds, so this cost, on average, represents only 3.8 percent of a small PHA's funding, which is not a significant impact.

As also noted in Section III of this preamble, applying for demolition or disposition of a portion of the property has no economic impact on the PHA apart from this minor administrative cost; units are removed from the inventory and the PHA will no longer receive operating funds for those units, but the PHA will also not have any operating or maintenance expenses for those units. Furthermore, any resident relocation would be to existing PHA housing or funded through section 8 of the 1937 Act, 42 U.S.C. 1437f. Accordingly, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less

burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### 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 rule does not impose any Federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

#### Environmental Impact

A Finding of No Significant Impact 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 is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at (202) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339.

#### Executive Order 13132, Federalism

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.

#### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 970 is 14.850.

#### **List of Subjects in 24 CFR Parts 970 and 972**

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

For the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 970 and 972 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**

#### **Subpart A—Demolitions and Dispositions under Section 18 of the U.S. Housing Act of 1937**

Sec.	
970.1	Purpose.
970.3	Applicability.
970.5	Definitions.
970.7	General requirements for HUD review and approval of a demolition or disposition application.
970.9	Resident participation—consultation and opportunity to purchase.
970.11	Procedures for the offer of sale to an Established Eligible Organization.
970.12	Civil rights and equal opportunity review.
970.13	Environmental review requirements.
970.14	Section 3 compliance.
970.15	Specific criteria for HUD approval of a demolition application.
970.17	Specific criteria and conditions for HUD approval of a disposition application.
970.19	Requirements for the disposition of a project.

970.20	Use and treatment of proceeds.
970.21	Relocation of residents.
970.23	Costs of demolition and relocation of displaced residents.
970.25	Required and permitted actions prior to approval.
970.27	De minimis exception to demolition application requirement.
970.29	Criteria for HUD disapproval of a demolition or disposition application.
970.31	Effect on Operating Fund Program and Capital Fund Program.
970.33	Demolitions due to emergency, disaster, or accidental loss.
970.35	Removal of all projects in the PHA's public housing inventory.
970.37	Reports and records.

#### **Subpart B Real Property Transactions: Retention of Projects by Public Housing Agencies**

970.39	Definitions.
970.41	Applicability.
970.43	Removal of a project from public housing without a transfer to a third party.
970.45	Specific criteria for HUD approval of requests under this subpart.

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

#### **Subpart A – Demolitions and Dispositions under Section 18 of the U.S. Housing Act of 1937**

##### **§ 970.1 Purpose.**

This part states requirements for HUD approval of applications 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 (1937 Act). This subpart states the requirements applicable to demolitions and dispositions of public housing projects as provided under section 18 of the 1937 Act. Subpart B of this part states the requirements applicable to real property transactions and retention of projects by public housing agencies (PHAs). The regulations in 24 CFR part 85 are not applicable to this subpart, and are addressed in subpart B of this part.

##### **§ 970.3 Applicability.**

(a) This subpart applies to public housing projects that are subject to an annual contributions contract (ACC) under the 1937 Act and which are proposed for demolition,

disposition, or both, through an application under section 18 of the 1937 Act, and includes projects owned by PHAs;

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

(1) Public housing projects that PHAs apply to retain under subpart B of this part;

(2) PHA-owned Section 8 housing, or housing leased under former sections 10(c) or 23 of the 1937 Act;

(3) Demolition or disposition before the date of full availability (DOFA) of property acquired incidental to the development of a project (however, this exception shall not apply to dwelling units under ACC);

(4) The conveyance of projects for the purpose of providing homeownership opportunities for low-income families under sections 21 and 32 of the 1937 Act (42 U.S.C. 1437s and 42 U.S.C. 1437z-4, respectively), the homeownership program under former section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)), or other predecessor homeownership programs;

(5) An agreement with a third party (e.g., leases or license, solar roof top lease, telecommunications lease, garden or park space) provided such agreement:

(i) Benefits the PHA and its residents;

(ii) Is consistent with the PHA's Plan (as determined by HUD);

(iii) Is consistent with the PHA's ACC with HUD; and

(iv) Is approved in writing by HUD;

(6) The adaptation or utilization of portions of projects (including available common areas and unoccupied dwelling units) for authorized non-dwelling purposes related to public housing, including resident amenities, activities and services, and public housing administration;

(7) The leasing of a project (but not individual dwelling units) for the purpose of enabling a prospective owner-entity to show site control in an application for funding for the redevelopment of the project, such as low-income housing tax credits (LIHTC), provided such lease is for one year or less and is approved by HUD in writing;

(8) The reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) for an authorized use related to the normal operation of public housing, without “demolition,” as defined in § 970.5. (This includes the reconfiguration of bedroom size, occupancy type, or changing the status of unit from dwelling to non-dwelling in accordance with all applicable HUD requirements and approvals. Changes in the number of units or number of bedrooms will be reflected in the PIH Information Center (PIC) or any future substitute system required by HUD);

(9) Easements, rights-of-way, and transfers of utility systems related to the normal operation of the project for public housing purposes as permitted by the ACC, provided such easements, rights-of-way, and transfers of utility systems are approved by HUD in writing;

(10) 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 Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 et seq.) applies to any resulting displacement of residents and it is the responsibility of the taking agency to comply with applicable URA requirements;

(11) Real property (vacant land and improvements) that is owned or has been acquired by, or donated to, a PHA with public housing or other funds and then conveyed, sold, or otherwise transferred to an owner-entity prior to DOFA to enable an owner-entity to develop the property using the mixed-finance development method at 24 CFR 905.604;

(12) Disposition of vacant land (but not units) comprising a project for development pursuant to the mixed-finance development method at 24 CFR 905.604 are exempt from this regulation, but not Section 18 of the 1937 Act, and provided that the PHA:

(i) Submits an application, in the form prescribed by HUD, that evidences to HUD's satisfaction that it has complied with the requirements of section 18 of the 1937 Act; and

(ii) Receives HUD approval of that application before commencing the disposition of the project;

(13) Demolition under the de minimis exception in § 970.27, except that the environmental review provisions apply, including the provisions at §§ 970.7(c)(18) and 970.13, provided that the PHA notifies HUD in the form prescribed and submits the documents and information outlined in § 970.27(e) and, except in cases of imminent threats to health or safety, HUD acknowledges the action in writing prior to the commencement of the demolition;

(14) Demolition (but not disposition) of severely distressed units as part of a revitalization plan under section 24 of the 1937 Act (42 U.S.C. 1437v) (HOPE VI and Choice Neighborhoods) approved after October 21, 1998;



(15) Demolition (but not disposition) of projects removed from a PHA's inventory under section 33 of the 1937 Act (42 U.S.C. 1437z-5);

(16) Demolition of projects due to a disaster, sudden accidental or casualty loss, as permitted by the ACC and § 970.33, provided the PHA submits the documents and information outlined in § 970.33;

(17) Dispositions of projects of a de minimis nature that are necessary to correct and/or clarify legal descriptions to deed or ownership documents, provided such de minimis dispositions are approved by HUD; and

(18) Consolidation of occupancy within or among buildings of a project, or among projects, or with other low-income housing for the purposes of improving living conditions of, or providing more efficient services to residents, provided such consolidation of occupancy is done in accordance with applicable federal laws and requirements, which may include the PHA's written policies on admissions and continued occupancy, the PHA's section 8 Administrative Plan (24 CFR part 982), and PHA Plan requirements (24 CFR part 903), and further provided the PHA notifies HUD in writing in advance of such occupancy consolidation.

(c) The exclusion of activities in §970.3(b) from applicability of this subpart does not impair the applicability of other requirements that apply independently of section 18 of the 1937 Act, including the requirements of section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(d)).

#### **§ 970.5 Definitions.**

1937 Act, is defined in 24 CFR 5.100.

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

Accessible, or accessibility, means accessible to persons with disabilities as defined further in HUD's regulations at 24 CFR 8.3.

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 and who has the authority to contractually bind the jurisdiction. 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.

Commensurate public benefit means benefits to the residents of the PHA, the community, and/or the federal government, as approved by HUD. General public improvements or public infrastructure such as streets and bridges, do not qualify as commensurate public benefits. HUD will generally consider the following to be commensurate public benefits:

(1) Rental dwelling units (in a number approved by HUD) to house low-income families (as defined herein) for a period required by HUD of not less than 30 years from the date such units are available for occupancy, and for which all lease-compliant public housing residents (as defined herein) who are displaced from a public housing project (as defined herein) due to a demolition and/or disposition under this part are provided with an opportunity to return to size-appropriate public housing units that are rebuilt on the site;

(2) Homeownership dwelling units (in a number approved by HUD) affordable to low-income families;

(3) Non-dwelling structures or facilities to serve low-income families, as approved by HUD; and

(4) Other or additional benefits as approved by HUD (which may include, in part, planning and carrying out section 3 activities under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3 or section 3 activities) related to these proposed benefits)).

Comparable housing means housing that meets housing quality standards (HQS) (or such successor standard that HUD may adopt) and is appropriate in size for the household. For residents with a disability, comparable housing must include the accessibility features needed by the resident and must be located in the most integrated setting appropriate for the resident with a disability (i.e., the setting that enables the resident to interact with non-disabled persons to the fullest extent possible and have access to community-based services). Comparable housing must be located in an area that is generally not less desirable than the location of the displaced resident's current public housing unit. In determining comparable housing, a PHA shall also consider the following criteria (in aggregate): neighborhood safety; quality of local schools; accessibility of amenities (e.g., transportation, employment); and exposure to adverse environmental conditions. Relocation associated with demolition and disposition plans must be consistent with the PHA's obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5))).

(1) Comparable housing for displaced residents is generally other subsidized housing and may include:

(i) Tenant-based assistance under section 8 of the 1937 Act;

(ii) Project-based assistance under section 8 of the 1937 Act; or

(iii) Occupancy in a unit operated or assisted by a PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the public housing unit from which the resident is displaced. Comparable housing for a resident household which is not eligible for public or assisted housing or in cases where no other comparable subsidized housing is available may be provided by offering referrals to non-subsidized housing currently available on the private market, and may include another level of housing assistance, as adopted by the PHA and approved by HUD, in order to mitigate the costs of displacement.

(2) [Reserved]

Demolition means the removal by razing or other means, in whole or in part, of one or more permanent buildings of a project such as to render the building(s) uninhabitable as defined by the applicable building occupancy code. A demolition involves:

(1) The lifting and relocation of a building from its existing site to another site not covered by the same DOT; or

(2) The removal of 50 percent or more of a building's partition walls in addition to four or more of the following:

(i) Envelope removal (roof, windows, exterior walls);

(ii) Kitchen removal;

(iii) Bathroom removal;

(iv) Electrical system removal (unit service panels and distribution circuits); or

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

Declaration of Trust (DOT) means a legal instrument that grants HUD an interest in a project. It provides public notice that the project must be operated in accordance with all public housing federal requirements, including the requirement not to convey or otherwise encumber the property unless expressly authorized by federal law and/or HUD.

Displaced resident means a “resident” as defined in this section that is relocated permanently from the project as a direct result of a demolition and/or disposition action under this part. The term “displaced resident” means a resident displaced from a project under this part and includes, but is not limited to:

(1) An eligible public housing resident (including any current members of the resident household) that lives in a project at the time the displacement is approved, subject to an ACC under the 1937 Act; and

(2) An over-income or other resident who is otherwise ineligible for occupancy in public housing or other subsidized housing who, at the time the displacement is approved, resides in a project subject to an ACC under the Act but occupies a unit under PHA policies for continued occupancy or other special rent exceptions.

Disposition means the sale or other transfer (e.g. ground lease) of a project that will cause HUD to terminate the ACC with respect to the project and release the DOT recorded against the project, provided that such sale or transfer is to a legal entity that is independent from the PHA under the applicable state law.

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 project are available for occupancy.

Emergency means any occasion or instance for which, in the determination of the President or HUD, federal assistance is needed to supplement state and local efforts and

capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Established Eligible Organization, means any resident council or any resident management corporation as those terms are defined in 24 CFR part 964, or to a nonprofit organization acting on behalf of the residents.

Fair Market Value (FMV) means the estimated market value of a project, as determined by an independent appraiser contracted but not employed by the PHA and completed within 6 months of the date an application is submitted to HUD, unless a longer time is approved by HUD.

Firm financial commitment means a commitment that obligates a creditable source, lender, or equity provider, to the lending or equity investment of a specific sum of funds to be made on or before a specific date(s) and may contain contingencies or conditions that must be satisfied by the borrower (or entity receiving equity investments). 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 Quality Standards (HQS) has the same meaning as 24 CFR part 982.

Housing Construction Cost (HCC) has the same meaning as in 24 CFR part 905.

Lease-compliant displaced resident means a displaced resident (including household members whose names appear on the public housing lease) who has not engaged in serious or repeated violations of material terms of the lease that result, or could result, in good cause to evict, and terminate the resident's assistance.

Low-income families has the same meaning as found in section 3 of the 1937 Act (e.g., families with incomes that do not exceed 80 percent of area median income (AMI)).

Low-income housing has the same meaning as section 3 of the 1937 Act (e.g., decent, safe, and sanitary dwellings assisted under the 1937 Act) and which may include public housing units and units assisted by funds from section 8 of the 1937 Act (e.g., tenant-based or project-based voucher units under section 8 of the 1937 Act, and homeownership units developed under sections 32, 24, or 9 of the 1937 Act.)

Major disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which:

(1) In the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this 1937 Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations; or

(2) Causes severe danger, hardship, or suffering, as determined by HUD.

PHA or Public Housing Agency is defined at 24 CFR 5.100.

PHA Plan means the plan the PHA is required to prepare and/or submit to HUD under section 5(A) of the 1937 Act (42 U.S.C. 1437c-1) and 24 CFR part 903, and which plan must be consistent with the jurisdiction's Consolidated Plan under 24 CFR part 91 (the PHA Plan is generally the annual plan unless the PHA is a Moving to Work (MTW) agency in which case it means the Annual MTW Plan).

Project means discrete property, including all necessary appurtenances (e.g., playgrounds, as well as equipment and personal property that has been acquired with HUD funds and used in the operation, maintenance, or improvement of the project) and other real property developed, acquired, or assisted with funds under the 1937 Act. A project may comprise vacant land and/or

dwelling or non-dwelling structures. A project will generally have an identification number in the PIH Information Center (PIC), but may also include housing, including mixed finance public housing units, and other real property that has been acquired or otherwise developed with funds provided under the 1937 Act, but without prior HUD approval. A project may be owned by a PHA or, in whole or in part, by another owner entity pursuant to 24 CFR 905.604. A project is governed by an ACC. For purposes of this part, the term project includes any housing or other real property, regardless of whether the property comprises all or a portion of property on a given site and/or within a project number, and includes units developed pursuant to the mixed finance method at 24 CFR 905.604. The term project means the same as the word development used in other HUD systems and guidance.

Public housing funds are defined at § 905.108 and include disposition proceeds that a PHA may realize under 42 U.S.C. 1437p. In the case of such proceeds, § 970.20(d) applies.

Public housing unit means a dwelling unit in a project, including a dwelling unit developed for homeownership under the 1937 Act (other than units developed for homeownership under section 8(y) of the Act) prior to the transfer of title of that unit to the homebuyer.

Qualified PHA means a PHA that is considered a “qualified public housing agency” under section 2702 of the Housing and Economic Recovery Act of 2008 (HERA), codified at section 5A(b)(3) of the 1937 Act (42 U.S.C. 1437c–1(b)(3)).

Related to the normal operation of the project for public housing purposes means activities that are required or permitted to meet the obligations of the ACC, including the provision of low-income housing and related services and other benefits to the residents of the PHA.



Resident means an individual or family who in accordance with the 1937 Act:

- (1) Is living in a public housing unit;
- (2) Is living in a unit that is assisted with funds under section 8 of the 1937 Act; or
- (3) Is eligible for assistance under an MTW agency's HUD-approved annual MTW plan.

Resident Advisory Board (RAB) has the same meaning as in 24 CFR 903.13(a).

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

Resident Management Corporation (RMC) has the same meaning as 24 CFR 964.7.

**§ 970.7 General requirements for HUD review and approval of a demolition or disposition application.**

(a) Application for HUD approval. A PHA must obtain written approval from HUD before undertaking any transaction involving demolition and/or disposition of a project. Where a PHA demolishes or disposes of a project 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 and/or disposition upon the 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 such additional funding available.

(b) Sufficiency of application. HUD will not consider an application for demolition, disposition, or both, unless the application contains all the substantial information set forth in § 970.7 and in this part, and will return an incomplete application to the PHA.

(c) Form of application. Applications for demolition and/or disposition shall be submitted in the form and manner prescribed by HUD. The supporting information shall include:

(1) A certification that the PHA has specifically authorized the demolition and/or disposition action in its PHA Plan or significant amendment to that plan unless the PHA is a qualified PHA under the Housing and Economic Recovery Act of 2008 (HERA), and the proposed action is consistent with any plans, policies, assessments, or strategies prepared pursuant to the PHA Plan, such as the deconcentration plan (24 CFR 903.2) and the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). In the case of a qualified PHA, the PHA must describe the proposed demolition and/or disposition at its required annual public hearing (or a second public hearing if it determines to submit an application for demolition and/or disposition between its annual public hearings). Qualified PHAs must also comply with §§ 970.12 and 970.7(c)(19) regarding civil rights and fair housing requirements in connection to 24 CFR part 903 and PHA Plans;

(2) A description of all identifiable property (including dwelling and non-dwelling units, bedroom size, and whether the units meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, other improvements, and land (acreage and legal description) in the project proposed for demolition and/or disposition, as well as equipment and personal property appurtenant to the project proposed for demolition and/or disposition;

(3) The number of vacant units proposed for demolition and/or disposition and a narrative explanation for the reasons for the vacancies (e.g., health/safety issues, occupancy consolidation, emergency relocation due to disaster);

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

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

(ii) If disposition is involved, the method of disposition (e.g., sale or lease terms, proposed compensation, negotiated or public bid disposition);

(iii) The anticipated future use of the project after demolition and/or disposition, including any anticipated subsidies (e.g., low-income housing tax credits, Section 8 project-based vouchers, Section 8 tenant-based vouchers) that the PHA expects will be used for future dwelling that will be operated as housing for low-income families on the site of the former project; and

(iv) Plans for replacement of demolished or disposed of housing, if any;

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

(6) A statement and other supporting documentation justifying the proposed demolition and/or disposition under the applicable criteria of §§ 970.15 or 970.17;

(7) If any residents will be displaced by the proposed demolition and/or disposition, a certification that the PHA will comply with the relocation provisions of this part and a written relocation plan in compliance with this part that describes the proposed relocation of residents, and includes the following information:

(i) The estimated number of individual residents and families to be displaced;

(ii) The comparable housing resources the PHA will provide to displaced residents. If the source is tenant-based assistance under section 8 of the 1937 Act, indicate if the PHA is relying on a future allocation of tenant-protection vouchers to complete the relocation and if the PHA's desire to proceed with the action, if approved, is conditional upon its receipt of such vouchers. If some residents are not eligible to move to other public or assisted housing, the PHA must describe why such residents are not eligible and what resources it will make available to provide comparable housing for such displaced residents;

(iii) The type of housing counseling services, including mobility counseling, to be provided to residents so that they are informed about comparable housing opportunities throughout the market area (e.g., showing residents who receive a tenant-based voucher comparable housing located in neighborhoods with low concentrations of poverty and high-performing schools), and plans for making this counseling available to persons with disabilities in accordance with the effective communication requirements at 24 CFR 8.6 and to residents with limited English proficiency;

(iv) An estimate of the costs for housing counseling services and resident relocation, and the expected source for payment for these expenses;

(v) A discussion of how the PHA will relocate residents in compliance with the non-discrimination and equal opportunity requirements specified under 24 CFR 5.105(a). This discussion shall include, but is not limited to, how the PHA will make its best efforts to offer each displaced resident at least one unit of comparable housing that is located in a non-minority area with access to public transportation, employment, education, child care, medical services, shopping, and other amenities. The PHA shall provide census tract data for the location(s) of the comparable housing that it will offer to residents;

(vi) A plan for determining the housing needs of displaced residents with disabilities and offering them comparable housing that includes the accessibility features needed by the resident with a disability in the most integrated setting appropriate for the resident (i.e., the setting that enables the resident with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services);

(vii) A plan and information required by § 970.21(d) if applicable; and

(viii) A relocation timetable, which indicates the estimated number of days after HUD approval of the demolition and/or disposition action that the PHA plans to begin relocating residents. This information will be used to determine the PHA's Operating Fund eligibility under 24 CFR part 990, which may include an asset-repositioning fee under 24 CFR 990.190(h);

(8) A description with supporting evidence of the PHA's consultations with affected residents and other groups, as required under § 970.9(a). Supporting evidence shall include: a description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; any certifications or other written documentation that the PHA receives from the RAB (or equivalent body) and resident council regarding resident support or opposition; a description and/or documentation evidencing that the PHA communicated with affected residents and other required groups in a manner that was effective for persons with hearing, visual, and other communications-related disabilities consistent with 24 CFR 8.6 and that public hearing facilities and services were physically accessible to persons with disabilities, and that appropriate translations were provided for Limited English Proficient (LEP) individuals;

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

(10) In the case of disposition, the name of the acquiring entity (e.g., buyer or ground lessee) and a legal opinion that the acquiring entity is a separate legal entity (i.e., an affiliate or fully independent entity rather than an instrumentality of the PHA) under the applicable state law;

(11) In the case of disposition, the FMV of the project, as established on the basis of at least one independent appraisal, unless otherwise determined by HUD, as described in § 970.19;

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

(13) In the case of disposition proposed at below FMV based on commensurate public benefit in accordance with § 970.19, HUD will consider the anticipated future use of the project after disposition described in § 970.7(c)(3). In addition, the supporting information for the application shall include:

(i) A detailed description of any housing that will be located on the property, including the number of units, bedroom sizes, accessibility, affordability, and priorities for displaced residents;

(ii) The proposed length of time in which the acquiring entity will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g., number of affordable units) arising from proposed disposition and the FMV of the property in determining if a period of less than 30 years is acceptable);

(iii) The plan to implement the opportunity to return requirement for existing residents' as outlined in § 970.21(d);

(iv) The proposed legal documentation (e.g., use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use; and

(v) Other information as may be required by HUD in determining if a commensurate public benefit exists;

(14) Where the PHA is requesting a waiver of the requirement for the application of proceeds for repayment of outstanding development debt, the PHA must request such a waiver in its application, however, modernization debt, such as Capital Fund Financing Program (CFFP) debt, Energy Performance Contracting (EPC) debt, and Operating Fund Financing Program (OFFP) debt cannot be waived and repayment is required;

(15) In the case where the PHA has applied for and/or been approved for financing under any HUD program (including CFFP, the OFFP, and the EPC program) or any other financing requested pursuant to section 30 of the 1937 Act (42 U.S.C. 1437z-2)), a legal opinion that the proposed demolition and/or disposition action is permitted pursuant to the legal documentation associated to that program;

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

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

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

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

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

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

(18) An approved environmental review of the proposed demolition and/or disposition in accordance with 24 CFR parts 50 or 58, including acting in accordance with the applicable environmental justice principles, for any demolition and/or disposition of the project covered under this part, as required under § 970.13;

(19) Evidence of compliance with § 970.12 including:

(i) A civil rights certification in a form and manner prescribed by HUD whereby the PHA certifies:

(A) A description of how the proposed demolition and/or disposition will help the PHA meet its affirmative obligations including, but not limited to, the obligation and to overcome discriminatory effects of the PHA's use of 1937 Act funds pursuant to part 1 of this title and the



obligations to deconcentrate poverty (24 CFR part 903, subpart A) and affirmatively further fair housing (42 U.S.C. 3608(e)(5));

(B) It does not have any outstanding charges from HUD (or a substantially equivalent state or local fair housing agency) concerning a violation of the Fair Housing Act or substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status;

(C) It is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice;

(D) It does not have outstanding letters of findings identifying noncompliance under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974; and

(E) It has not received a cause determination from a substantially equivalent state or local fair housing agency concerning a violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation, gender identity, or source of income;

(ii) Additional supporting information that may be requested by HUD, if applicable, that shows that the proposed demolition and/or disposition will not maintain or increase segregation on the basis of race, ethnicity, or disability and will not otherwise violate applicable nondiscrimination or equal opportunity requirements, including a description of any affirmative efforts to prevent discriminatory effects;

(20) A description and data regarding the race, color, religion, sex, national origin, familial status, and disability status of its residents who will be displaced by the action, the residents anticipated to remain in a public housing project that is partially demolished or disposed of, and the applicants on the PHA's waiting list(s), by bedroom size;

(21) A certification that the PHA will comply with this part and the terms and conditions of the HUD demolition and/or disposition approval, including, if applicable, monitoring the future use of a former project, for compliance with HUD's approval; and

(22) Any additional information requested by and determined to be necessary to HUD to support the demolition and/or disposition application and assist HUD in making a determination to approve or disapprove the application under this part.

(d) Approval documents. (1) If a PHA includes documentation, certifications, assurances, or legal opinions in its application that go above and beyond the requirements of section 18 or this part, HUD may include these as additional requirements in its approval of the demolition and/or disposition action.

(2) A PHA shall not take any action contrary to the terms and conditions of HUD's approval documents of a demolition and/or disposition action without obtaining prior written approval of the proposed change from HUD.

(e) Amendments to and rescissions of approval. (1) HUD will consider a PHA's request to amend an earlier approval on a case-by-case basis upon the PHA's submission (in the form prescribed by HUD) of an explanation and documentation, if applicable, evidencing the reason for the requested change.

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

**§ 970.9 Resident participation—consultation and opportunity to purchase.**

(a) Resident consultation. PHAs must ensure that they communicate with public housing and rental assistance applicants and residents in a manner that is effective for persons with hearing, visual, and other communications-related disabilities consistent with section 504 of the Rehabilitation Act of 1973, and as applicable, the Americans with Disabilities Act. This includes ensuring that notices, policies, and procedures are made available via accessible communications methods including the use of alternative formats, such as Braille, audio, large type, sign language interpreters, and assistive listening devices, etc., and are written in plain language. Additionally, PHAs must ensure public hearing facilities and services are physically accessible to persons with disabilities in accordance with section 504 of the Rehabilitation Act of 1973 and that Limited English Proficient (LEP) individuals will have meaningful access to programs and activities, in accordance with Executive Order 13166.

(1) A PHA must consult with the following residents and resident groups who will be affected by a proposed demolition, disposition, or combined action that is the subject of an application:

- (i) Residents who are residing in the project proposed for demolition and/or disposition;
- (ii) Resident council, if any;
- (iii) Resident management corporation for the project, if any;
- (iv) PHA-wide resident organization, if any; and
- (v) The Resident Advisory Board (RAB) (or equivalent body).

(2) As part of such consultation, the PHA must either provide a copy of its demolition and/or disposition application to the residents and groups identified above, post the application on its website, or make the application available for review at its central office. Consultation must take place as follows:

(i) On the final application submitted to HUD (e.g., even if the PHA consults the affected residents and groups early on in the application planning process, it must consult the residents and groups again on the final application);

(ii) On any report on the environmental or health effects of the proposed activities;

(iii) On the relocation plan, if any, for the demolition and/or disposition action;

(iv) Informed by the PHA that they have a right to submit written comments about the application and that the PHA shall respond to those comments in writing to the residents and also submit such comments and responses to HUD.

(v) Provided by the PHA with a reasonable timeframe in which they can submit written comments and must respond to those comments within a reasonable timeframe; and

(vi) If applicable, consultation with Affected Resident and Resident Groups shall include information concerning the opportunity to return to ACC units under § 970.21(d).

(b) Applicability of the requirement to sell to Established Eligible Organization. In the situation where the PHA applies to dispose of a project:

(1) The PHA shall, in appropriate circumstances as determined by the Assistant Secretary, initially offer the project proposed for disposition to any Established Eligible Organization, if such Established Eligible Organization has expressed an interest in purchasing the project for continued use as housing for low-income families in accordance with § 970.11.

(2) If the Established Eligible Organization has expressed an interest in purchasing the project for continued use as housing for low-income persons, in order for its purchase offer to be considered, the Established Eligible Organization must:

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

(ii) Demonstrate that it has obtained a firm commitment for the necessary financing within 60 days of the date 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 (e.g., a local government wishes to use the land to build or establish a police substation);

(ii) A PHA seeks disposition to privately finance or otherwise develop housing for low-income families (including housing that is part of a mixed-income community) or to develop a non-dwelling facility to benefit low-income families (e.g., day care center or administrative building);

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

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

(v) 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 project, without affording an opportunity for purchase by a resident organization.

However, PHAs must:

- (i) Consult with their residents in accordance with paragraph (a) of this section; and
- (ii) Submit documentation with date and signatures to support the applicability of one of the exceptions in paragraph (b)(3) of this section.

(c) Established Eligible Organization purchase of project. Where there is an Established Eligible Organization that has expressed an interest in purchasing the project in accordance with the requirements of § 970.11, the PHA shall follow the procedures concerning such offer as described in such section.

**§ 970.11 Procedures for the offer of sale to an Established Eligible Organization.**

In making an offer of sale to an Established Eligible Organization, in the case of a proposed disposition, the PHA shall proceed as follows:

(a) Initial written notification of sale of project. 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 project. The notice of sale must include, at a minimum, the information listed in paragraph (b) of this section.

(b) Contents of initial written notification. The initial written notification to each Established Eligible Organization under paragraph (a) of this section must include at a minimum the following:

(1) An identification of the project involved in the proposed disposition, including the project number and location, the number of units and bedroom configuration, the number of accessible units or units that otherwise contain accessible features, 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 project and any terms of sale to residents;
- (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 project, the project's value, and potential use;
- (5) A statement that any project sold to an Established Eligible Organization will not continue to receive grants from the Capital Fund and Operating Fund after the completion of the sale unless the Established Eligible Organization is also a Resident Management Corporation and such Resident Management Corporation enters into an ACC with HUD in accordance with 24 CFR part 964;
- (6) Any and all terms of sale that the PHA will require, including a statement that the purchaser must use the project for low-income housing. If the PHA does not know all the terms of the offer of sale at the time of the notice of sale, the PHA shall include all the terms of sale of which it is aware. The PHA must supply the totality of all the terms of sale and all necessary material to the residents no later than 7 business days from the day the PHA 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 project proposed for demolition and/or disposition, which shall be up to 30 days from the date of the official written offer of sale from the PHA; and
- (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 project and to obtain a firm financial commitment, as defined in § 970.5.

The statement shall:

(i) 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;

(ii) Provide that the PHA can consider accepting an offer from the organization that differs from the terms of sale;

(iii) 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 project to be sold meet the terms of sale, the PHA shall choose the best proposal. The PHA may reject all proposals if none adequately meet terms of sale or may select the best available proposal.

(c) 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.

(d) Opportunity to obtain firm financial commitment by a notified eligible organization. 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 project 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 project.

(e) Response to the notice of sale. The Established Eligible Organization, or organizations have up to 30 days, from the date the notice is postmarked, 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 (c) 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 project of which the PHA plans to dispose, and to obtain a firm commitment for financing. The Established Eligible Organization's proposal shall provide all the information requested in paragraph (i) of this section.

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

(h) Appeals. An Established Eligible Organization has the right to appeal the PHA's decision to the Assistant Secretary for Public and Indian Housing, or the Assistant Secretary's designee, by sending a letter of appeal within 30 days of the date of the PHA's decision to the Field Office of Public Housing Director.

(1) 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.

(2) HUD shall render a decision within 30 days of the date the appeal is received by HUD, and notify the organization and the PHA by letter within 14 days of such decision. If

HUD cannot render a decision within 30 days, HUD will so notify the PHA and the Established Eligible Organization in writing, in which case HUD will have an additional 30 days in which to render a decision. HUD may continue to extend its time for decision in 30-day increments for a total of 120 days. Once HUD renders its decision, there is no further administrative appeal or remedy available.

(i) Contents of the organization's proposal. The Established Eligible Organization's proposal shall at a minimum include the following:

- (1) The length of time the organization has been in existence;
- (2) A description of current or past activities that demonstrate the organization's organizational and management capability, or the planned acquisition of such capability through a partner or other outside entities (in which case the proposal should state how the partner or outside entity meets this requirement);
- (3) To the extent not included in paragraph (i)(2) of this section, the Established Eligible 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 project and a firm financial commitment as stated in paragraph (c) of this section for funding resources necessary to purchase the project and pay for any necessary repairs, including accessibility modifications;

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

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

(9) Justification for purchase at less than the FMV of the project in accordance with § 970.19(a), if applicable;

(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 Established Eligible Organization approving the proposal; and

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

(j) PHA responsibility. The PHA must:

(1) Prepare and distribute the initial notice of sale pursuant to §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) Obtain certifications, where appropriate, as provided in paragraph (k) of this section; and

(4) Comply with its requirements under § 970.9(a) regarding resident 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 an Established Eligible Organization, and shall accept the proposal if the proposal meets the terms of sale.

(k) Offer by an Established Eligible Organization. If an offer is made by an Established Eligible Organization, the PHA shall:

(1) Submit its disposition application to HUD in accordance with section 18 of the 1937 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 project 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 1937 Act and this part reflecting the arrangement with the Established Eligible 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 an Established Eligible Organization, the Established Eligible Organization may appeal as provided in paragraph (h) of this section. Once the appeal is resolved, or, if there is no appeal, and the 30 days allowed for appeal has passed, HUD shall proceed to approve or disapprove the application.

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

(i) An official board resolution or its equivalent from each Established Eligible Organization stating that such organization has received the PHA offer, and that it understands the offer and waives its opportunity to purchase the project 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 rejected.

**§ 970.12 Civil rights and equal opportunity review.**

Demolition and/or disposition activities under this part (including de minimis demolition pursuant § 970.27) are subject to compliance with HUD's nondiscrimination and equal opportunity requirements specified in 24 CFR 5.105(a) and must be consistent with the PHA's civil rights certification at section 5A(d)(16) of the 1937 Act (42 U.S.C. 1437c-1(d)(16)) and the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). Pursuant to § 970.29, HUD will disapprove a PHA's application for demolition and/or disposition if HUD determines that the application is inconsistent with this section.

**§ 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, if a PHA objects in writing to the responsible entity performing the review under 24 CFR part 58, HUD may make a finding in accordance with 24 CFR 58.11(d) and perform the environmental review under the provisions of 24 CFR part 50.

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

- (1) Private, Federal, state, or local funding for the site reuse has been committed;
- (2) A grant application involving the site has been filed with the Federal Government or a state or local unit of government;
- (3) The Federal Government or a state or unit of local government has made a commitment to take an action, including a physical action, that will facilitate a particular reuse of the site; and
- (4) Architectural, engineering, or design plans for the reuse exist that go beyond preliminary stages.

(c) In the case of a demolition and/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, the provisions of 40 CFR 1506.11 will apply pursuant to 24 CFR 50.43 and 58.33.

**§ 970.14 Section 3 compliance.**

Pursuant to section 3 of the Housing and Urban Development Act of 1968 (section 3), HUD's regulation to provide employment, training, contracting, and economic opportunities to the greatest extent feasible to section 3 residents or business concerns is applicable to any projects or activities funded by public housing funds, regardless of the amount of funds (24 CFR 135.3(a)(3)), including the demolition or disposition of public housing. PHAs must comply with section 3 if public housing funds are used to demolish a project and when disposition proceeds

are used for section 3 covered assistance as defined in 24 CFR 135.3. In addition, in the event that section 3 does not apply to demolition and/or disposition actions, planning and carrying out section 3 activities related to these proposed actions would satisfy, in part, the commensurate public benefit requirement for below fair market value (FMV) dispositions pursuant to § 970.19.

**§ 970.15 Specific criteria for HUD approval of a demolition application.**

(a) In addition to other applicable requirements of this part, unless the application meets the criteria for disapproval under § 970.29, HUD will approve an application for demolition upon the PHA's certification that the project proposed for demolition meets the following criteria:

(1) The project is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes. HUD shall consider the following major problems to be indicative of obsolescence:

(i) As to physical condition: structural deficiencies, serious outstanding capital needs, and/or other design or site problems (e.g., severe erosion or flooding), as evidenced by an independent architect or engineer not employed by the PHA); or

(ii) As to location: physical deterioration of the neighborhood, change from residential to industrial or commercial development, or environmental conditions as determined by an environmental review in accordance with 24 CFR part 50 or 58, which jeopardize the suitability of the site and its housing structures for residential use, provided the PHA simultaneously submits a disposition application pursuant to § 970.17; or

(iii) As to other factors: conditions that have seriously affected the marketability, usefulness, or management of the project; and

(2) No reasonable program of modifications is cost-effective to return the project to its useful life as evidenced by at least one estimate of the rehabilitation cost of the project by an

independent architect or engineer that is not a regular employee of the PHA. HUD generally shall not consider a program of modifications to be cost-effective if the costs of such program exceeds Housing Conservation Coordinators (HCC) in effect at the time the application is submitted to HUD; and

(b) In the case of an application for demolition of a project that comprises less than all real property in a given project identification number, the PHA must also certify that the demolition will help to ensure the viability of the remaining portion of the project, except that this requirement shall not apply for applications where buildings are scattered non-contiguous sites.

(c) Unless the PHA also submits an application to HUD for disposition of the project in accordance with § 970.17 at the time it submits an application to HUD for the demolition of the project, the PHA must also certify that the vacant land comprising the project after demolition shall be used for low-income housing purposes, as permitted by the ACC, which may initially include land banking as approved in writing by HUD if a specific use is not determined.

(d) The PHA shall demolish a project approved under this part within two years of the date of HUD approval (unless the PHA receives an extension from HUD in writing).

**§ 970.17 Specific criteria and conditions for HUD approval of a disposition application.**

In addition to other applicable requirements of this part, unless the application meets the criteria for disapproval under § 970.29, HUD will approve a request for disposition of a project if the PHA certifies that the retention of the project is not in the best interests of the residents and the PHA for at least one of the following reasons:



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

(b)(1) Disposition allows for the acquisition, development, or rehabilitation of other properties that will be more efficiently and/or effectively operated as low-income housing (e.g., more energy efficient, better unit configurations to meet community needs, better location for resident jobs and transportation), provided that the PHA demonstrates to the satisfaction of HUD that public housing units will be replaced with other low-income housing units (e.g., public housing units or Section 8 project-based voucher units).

(2) In order to dispose of public housing units under paragraph (b)(1) of this section, a PHA must demonstrate to the satisfaction of HUD that sufficient replacement units are being provided in connection with the disposition of the property. A PHA must receive sufficient compensation from the disposition to replace not less than 75 percent of the public housing units (HUD encourages the PHA to replace as many units as is feasible through leveraging the proceeds) with other low-income housing units through acquisition, development, or rehabilitation as required by this part. Replacement units must be provided for all units housing families displaced by the disposition.

(3) The following additional terms apply to dispositions under paragraph (b)(1) of this section:

(i) The replacement housing units must be developed on another property (e.g., not on the same land as the existing project);

(ii) The PHA must have the replacement housing units (or land for the new construction of the units) identified at the time it submits a request to HUD under this part;

(iii) The PHA must provide its financing plan for the replacement units. HUD will evaluate the feasibility of the financing plan; and

(iv) The disposition of the project must be an arms-length transaction at FMV and 100 percent of the proceeds must be used to acquire, develop, or rehabilitate the replacement housing units. While a PHA may dispose to an affiliate (as defined in 24 CFR 905.604(b)(4)) that is an independent legal entity, a PHA may not dispose to its own instrumentality (as defined in 24 CFR 905.604(b)(3)).

(c) The PHA has otherwise determined the disposition to be appropriate for reasons that are in the best interests of the residents and the PHA, consistent with the goals of the PHA and the PHA Plan, and are otherwise consistent with the 1937 Act. The PHA may not dispose of a project under this section if the PHA's reason for disposition (as determined by HUD) falls under another HUD regulation or federal statute (e.g., § 970.17(b)), voluntary or required conversion under sections 22 or 33 of the 1937 Act, homeownership under section 32 of the 1937 Act, or proposed eminent domain taking). HUD considers each of the following reasons to be acceptable under this section:

(1) The project meets the criteria for obsolescence under § 970.15;

(2) The units will be rehabilitated through the mixed-finance development method. To reduce the number of public housing units in the project, the criteria under §970.15 or another section specifically permitting demolition or disposition, such as §§ 970.15, 970.17 (along with 970.19), 970.27, or 970.33, must be met; and

(3) Other reasons determined by HUD to meet the criteria of § 970.17(c).

(d) In the case of disposition of a project that does not include dwelling structures (e.g., includes non-dwelling community center structure, vacant land), the PHA certifies that:

(1) The non-dwelling structure or land exceeds the needs of the project (after DOFA);  
and

(2) The disposition is incidental to, or does not interfere with, the continued operation of the remainder of the project.

**§ 970.19 Requirements for the disposition of a project.**

(a) Where HUD approves the disposition of a project, the PHA shall dispose of the project for not less than FMV unless HUD authorizes a below FMV disposition under paragraph (b) of this section.

(b) HUD may approve a PHA to dispose of a project, in whole or in part, for less than FMV (if permitted by state law) if HUD finds, in its sole discretion, that a commensurate public benefit will result from the disposition.

(c) As a condition of HUD's approval of a project for disposition at below FMV under paragraph (b) of this section and HUD's release of the DOT on the project, HUD shall require the PHA to execute a use restriction, or other arrangement of public record, in a form acceptable to HUD, that will ensure to HUD's satisfaction that the former project will be used for the commensurate public benefit use approved by HUD for a period of not less than 30 years, and such use restriction is in a first priority position against the property and survives foreclosure of any mortgages or other liens on the property. The PHA is responsible for monitoring and enforcing the required use restrictions throughout the use restriction term. HUD may impose sanctions or take other enforcement action against the PHA if the PHA fails to enforce the use restrictions.

(d) If a PHA is unable to dispose of a project containing obsolete units that is approved for disposition under § 970.17(c)(1) in its "as is" condition despite due diligence and reasonable

efforts (as determined by HUD), if requested by the PHA, HUD will approve a demolition of the project (in accordance with § 970.15) so that the PHA can proceed with demolition and the disposition of only that vacant land comprising the project.

(e) The PHA shall dispose of a project approved for disposition under this part within two years of the date of HUD approval (unless the PHA receives an extension from HUD in writing).

(f) Where HUD approves the disposition of a project for a period greater than one year but fewer than 30 years (e.g., via lease or other transfer), the PHA is required to return the project to its public housing inventory, including adding the property again to its ACC and placing a DOT on the property, (or submit another disposition or other removal application) at the end of the approved disposition period.

(g) The PHA shall ensure the HUD-approved commensurate public benefit use commences within 2 years from the date of actual disposition of the project (unless the PHA receives an extension from HUD in writing).

(h) A PHA may pay the reasonable expenses of disposition and relocation costs for displaced residents under § 970.21 out of the gross proceeds, as approved by HUD.

(i) To obtain an estimate of the FMV before the project is advertised for bid, the PHA shall have one independent appraisal performed on the project 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 project interest involved or other available data.

(j) To obtain an estimate of the FMV when a project is proposed for disposition via a negotiated sale at less than FMV based on commensurate public benefit, HUD may accept a reasonable valuation of the project (e.g., tax assessor's valuation).

**§ 970.20 Use and treatment of proceeds.**

(a) Use of proceeds. Subject to HUD approval, a PHA shall use net proceeds, including any interest earned on the proceeds (after payment of HUD-approved costs of disposition and relocation under § 970.19 (h)), 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;

(2) For the payment of CFFP debt or later issued modernization debt on the project; and

(3) To the extent that any net proceeds remain, after the application of proceeds in accordance with paragraphs (a)(1) and (2) of this section, for the provision of low-income housing or to benefit the residents of the PHA, which uses may include:

(i) Modernization (as defined in 24 CFR 905.108) of existing projects;

(ii) Development (as defined in 24 CFR 905.108) of a project;

(iii) Funding of homeownership units in accordance with an approved homeownership plan under sections 9, 24, and 32 of the 1937 Act (42 U.S.C. 1437g, 1437v, and 1437z-4), respectively;

(iv) Construction, rehabilitation, and/or acquisition of dwelling units that will be assisted by funds under Section 8 of the 1937 Act, provided that:

(A) The PHA complies with safe harbors as determined by HUD in connection with such construction, rehabilitation, and/or acquisition;

(B) Complies with program regulations governing such assistance and the PHA executes a use agreement, in a form acceptable to HUD, to ensure the units will be operated exclusively as Section 8 units for not less than 30 years;

(4) Benefits to the residents of the PHA (e.g., job training, child care programs, service coordination), for uses permitted by HUD's Operating Fund regulations at 24 CFR part 990;

(5) Leveraging amounts for securing commercial enterprises on-site in public housing projects of the PHA, appropriate to serve the needs of the residents;

(6) Funding of voucher shortfalls under section 8 of the 1937 Act, however, this is subject to further HUD approval and discretion considering the applicable section 8 statutory, regulatory, and funding requirements; and

(7) Other housing assisted under the 1937 Act or benefits to the residents of the PHA, as approved by HUD.

(b) Net proceeds. Net proceeds which HUD approves for the purposes described in paragraph (a) of this section may be leveraged with other funds so long as the net proceeds are used on a pro-rata basis to fund only the approved uses (e.g., low-income housing units).

(c) Expenditure of proceeds. Expenditure of the proceeds pursuant to paragraph (a) of this section must begin within 2 years from the date of disposition approval and be completed (i.e., entirely expended for the approved use) within 4 years (unless the PHA receives an extension from HUD in writing).

(d) Disposition proceeds. Disposition proceeds are subject to all laws, regulations, and other requirements applicable to use approved by HUD unless otherwise approved by HUD in writing. For instance, if net disposition proceeds are approved by HUD for modernization of public housing units, they are considered public housing funds and are generally subject to the

requirements of 24 CFR part 905. However, when net disposition proceeds are used with HUD approval for the development of public housing units, the disposition proceeds will not count toward total development cost limits as determined pursuant to 24 CFR 905.314(c). Disposition proceeds may be used to supplement existing HAP contracts when there are funding shortages, but cannot be used to issue new vouchers. Federal requirements apply to disposition proceeds, including the Federal nondiscrimination and equal opportunity requirements stated in 24 CFR 5.105, environmental requirements, and, where applicable, the labor standard provisions of section 12 of the 1937 Act (42 U.S.C. 1437j) and section 3 of the HUD Act of 1968 (12 U.S.C. 1701u). 42 U.S.C. 1437p(a)(5).

(e) Recapture or repayment of proceeds. If a PHA fails to use proceeds as permitted by this section and approved by HUD or violates the term of the use agreement imposed to ensure proceeds are used in accordance with this part, HUD may recapture or require repayment of the proceeds or take all other available remedies available under law.

(f) Treatment of proceeds. Upon immediate receipt of proceeds and until expended for an approved use, PHAs must deposit proceeds into an interest bearing account subject to HUD General Depository Agreement and/or an escrow agreement in a form acceptable to HUD. All accrued interest shall be treated as additional proceeds, subject to this section.

#### **§ 970.21 Relocation of residents.**

(a) Notification to residents—Content. A PHA shall provide a written notice to each resident who will be displaced by a demolition and/or disposition action approved under this part. Notices shall be provided via an effective communications means to persons with disabilities in accordance with 24 CFR 8.6 and in the appropriate non-English language to

persons with limited English proficiency as needed. The notice shall specifically include the following information:

(1) A statement that the PHA's application for the demolition and/or disposition of the project has been approved by HUD and the project will be demolished and/or disposed of;

(2) A description of the process involved to relocate the residents, including that the residents will not be required to relocate until the conditions set forth in this section have been met, and in no event shall a PHA commence a demolition or disposition of the building (or a combined action) in which a resident lives until each resident of the building is provided relocation assistance in accordance with this section;

(3) A statement that each displaced resident shall be offered comparable housing that, at minimum:

- (i) Meets the standards stated in the definition of "comparable housing" in § 970.5; and
- (ii) Not be in a special flood hazard area as stated in 24 CFR 905.602(d)(11).

(4) If tenant-based assistance under section 8 of the 1937 Act is provided for relocation, such assistance will not be considered to have fulfilled the PHA's obligation to offer comparable housing under this section until the resident is actually relocated into such housing, or alternate housing is provided pursuant to paragraph (c) of this section;

(5) A description of the comparable housing options that the PHA is offering to the resident. This description shall include the location of the comparable housing and specifically how it at minimum meets the requirements of comparable housing, as defined in § 970.5;

(6) A statement that comparable housing shall be offered to each resident on a nondiscriminatory basis, without regard to race, color, religion, sex, national origin, familial status, or disability in compliance with applicable federal, state, and local laws;



(7) A statement that displaced residents with disabilities shall be offered comparable housing that includes the accessibility features needed by the resident with a disability and located in the most integrated setting appropriate for the resident (i.e., the setting that enables the resident with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services). This statement shall also include the right of displaced residents to a reasonable accommodation under Section 504 of the Rehabilitation Act of 1973, the Fair Housing Act, and the Americans with Disabilities Act, as applicable, and how to request such an accommodation;

(8) A statement that the PHA shall provide for the payment of the actual and reasonable relocation expenses of each displaced resident, including moving cost assistance, expenses necessary to provide reasonable accommodations for a resident with a disability in accordance with Section 504 of the Rehabilitation Act of 1973, and the payment of a displaced resident's security, utility, or both security and utility deposits at a comparable housing unit, provided that loans or grants directly to displaced residents for new deposits are not permitted if the PHA's source is either Capital or Operating Funds. The PHA shall pay such deposits directly to the utility company or landlord with subsequent returns or refunds back to the PHA. The resident shall hold no interest in a utility or security deposit paid by the PHA;

(9) A description of the housing counseling services, including mobility counseling, that will be available to the resident and how the resident can access these services; and

(10) If the provisions of section 104(d) of the Housing and Community Act of 1974 (42 U.S.C. 5304(d)) (section 104(d)), referenced in § 970.21(g), apply to the project, the notice required by § 970.21(a) must explain the assistance available under section 104(d).

(b) Notification to residents—Timing. (1) Except in cases of imminent threat to health or safety, no resident of a project approved by HUD for demolition and/or disposition shall be required to move unless he or she has been provided with the written notice required by § 970.21(a) at least 90 days prior to the displacement date. Displacement date means the earliest date by which a resident who will be displaced by a demolition and/or disposition action under this part shall be required to move.

(2) The notification required by paragraph (a) of this section shall not be issued to any resident prior to the date HUD approves the PHA's application for demolition and/or disposition.

(c) Offer of comparable housing. The PHA shall ensure that each displaced resident is offered comparable housing and provided with the relocation assistance required by this part.

(1) If a PHA offers a resident comparable housing in the form of tenant-based assistance under section 8 of the 1937 Act, and the resident is unable to lease a dwelling unit during the initial period of not less than 60-days, the PHA may either:

(i) Grant one or more extensions to the initial term in accordance with 24 CFR part 982 as reflected in its administrative plan; or

(ii) Provide the resident with another form of comparable housing (e.g., public housing unit or project-based unit under section 8 of the 1937 Act).

(2) The PHA shall not commence the HUD-approved demolition or complete the HUD-approved disposition of a building until each resident who will be displaced by the action is relocated in accordance with the requirements of this part.

(d) Plan of return. If HUD approves a below fair market value (FMV) disposition of a project based on commensurate public benefit under § 970.19 and housing units will be developed on-site at the former project, income-eligible, displaced residents shall be provided

with the opportunity to return to the new, appropriately sized units once those units are available for occupancy. The PHA shall develop a plan to implement this opportunity to return requirement and the plan must address the following:

- (1) How residents will be notified of the opportunity to return;
- (2) The amount of time residents will have to exercise the opportunity to return, from the date of the notice;
- (3) The source of funds from which the PHA or the new owner will pay the moving costs for moving the displaced residents back into the new units; and
- (4) The process for selecting displaced residents who will be offered an opportunity to return (for example, lottery) if the number of new public housing units cannot accommodate all lease-compliant displaced residents (as defined in § 970.5) at appropriate bedroom sizes. This opportunity to return requirement does not negate the PHA's responsibility to provide permanent comparable housing to all displaced residents in accordance with this part.

(e) Refusal or rejection. If a resident who will be displaced by a demolition, disposition, or combined action, refuses to move or otherwise rejects the PHA's offer(s) of comparable housing and relocation counseling and advisory services despite the PHA's due diligence and continued efforts to offer the resident comparable housing and counseling and advisory services, HUD shall consider the PHA to have satisfied the relocation requirements of this section if the PHA must resort to eviction of the resident as long as the PHA exercises due diligence in making continued efforts to offer the resident comparable housing and relocation counseling.

(f) Funding sources. Sources of funding for relocation expenses related to demolition and/or disposition may include, but are not limited to, gross proceeds a PHA receives under this

part, Capital Funds, section 8 administrative fee funding (where section 8 assistance is offered as comparable housing), or other federal funds currently available for this purpose.

(g) Certain funding requirements. If Federal financial assistance under the Community Development Block Grant (CDBG) program (42 U.S.C. 5301 et seq.); the Urban Development Action Grant (UDAG) program (42 U.S.C. 5318 et seq.); or the HOME Investment Partnerships (HOME) program (42 U.S.C. 12701 et seq.) is used in connection with the demolition of lower-income dwelling units, or conversion of such units to a use other than lower-income dwelling units, the project is subject to section 104(d) of the Housing and Community Development Act of 1974, including the relocation payment and one-for-one replacement provisions as provided at 24 CFR part 42, subpart C. For purposes of this paragraph (g), lower-income dwelling units and conversion shall have the definitions in 24 CFR part 42 and units in projects under this part are considered lower-income dwelling units.

(h) URA. The URA shall not apply to demolitions and/or dispositions actions under this part.

**§ 970.23 Costs of demolition and relocation of displaced residents.**

(a) A PHA may pay for the relocation expenses it incurs under § 970.21 with non-federal funds or any eligible HUD funds, which may include Capital Funds or proceeds received for a disposition under this part.

(b) A PHA may pay for the costs of demolition with non-federal funds or any eligible HUD funds, which may include Capital Funds when HUD approves a demolition under § 970.15.

(c) Where HUD has approved the demolition of a project and the proposed action is part of a program under the Capital Fund Program (24 CFR part 905), the expenses of the demolition

and of relocation of displaced residents must be included in the Capital Fund Submission pursuant to section 9(d) of the 1937 Act (42 U.S.C. 1437g(d)) or other eligible HUD funds.

**§ 970.25 Required and permitted actions prior to approval.**

(a) A PHA may not take any action to demolish and/or dispose of a project without obtaining prior written HUD approval under this part.

(1) HUD funds may not be used to pay for the expense to demolish or dispose of a project unless HUD approval has been obtained under this part.

(2) Until the PHA receives HUD approval, the PHA shall continue to meet its ACC obligations to maintain and operate the project as public housing. A PHA may not delay or withhold maintenance on a project in such a way as to cause or allow it to meet the demolition criteria under § 970.15.

(3) The PHA may engage in planning activities, analysis, or consultations without seeking HUD approval. Planning activities may include project viability studies, capital planning, relocation and replacement housing planning, and comprehensive occupancy planning.

(4) The PHA must continue to provide full housing services to all residents that remain in the project.

(b) A PHA may lease public housing units at turnover to eligible residents while HUD is considering, or after HUD has approved, its application for demolition and/or disposition of the project, provided that:

(1) The units are in decent, safe, and sanitary condition;

(2) The PHA determines that due to community housing needs or for other reasons consistent with its PHA Plan, leasing turnover units is in the best interests of the PHA, its residents, and community; and

(3) Residents of units leased during such a period are provided with the relocation assistance required by § 970.21. The PHA's Operating Fund eligibility will continue to be calculated as stated in 24 CFR part 990.

**§ 970.27 De minimis exception to demolition application requirement.**

(a) A PHA may demolish public housing units in a project without HUD approval if the PHA is proposing to demolish not more than the lesser of:

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

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

(c) In order to qualify for this exemption, one of the following criteria must be met:

(1) The space occupied by the demolished unit must be used for meeting the service or other needs of public housing residents (e.g., use of space to construct a laundry facility,

community center, child care facility, office space for a service coordinator; or for use as open space or garden); or

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

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

(e) For recordkeeping purposes, PHAs that wish to demolish units under this section shall submit the information required in § 970.7(c)(2), (16), (18), and (19) in addition to a certification that the unit(s) being demolished meets one of the two conditions in paragraph (c) of this section. HUD will accept such a certification unless it has independent information that the requirements for “de minimis” demolition have not been met. Additionally, PHAs demolishing units under this section must comply with the reporting and recordkeeping requirements of § 970.37.

(f) Any resident displaced by a “de minimis” demolition under this section shall be provided with housing assistance in accordance with applicable federal laws and requirements, which may include the PHA’s Admissions and Continued Occupancy Policy (ACOP) (24 CFR part 966), the PHA’s section 8 Administrative Plan (24 CFR part 982), and PHA Plan requirements (24 CFR part 903), and if CDBG or HOME funds are involved, section 104(d) of the Housing and Community Development Act of 1974.

**§ 970.29 Criteria for HUD disapproval of a demolition or disposition application.**

HUD will disapprove an application for demolition and/or disposition if HUD determines that:

(a) The applicant failed to satisfy the application requirements contained in § 970.7;

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

(1) Any information and data available to HUD related to the requirements of this part, including failure to meet the requirements for the justification for demolition and/or disposition as found in §§ 970.15 or 970.17 and the civil rights requirements referenced in § 970.12; or

(2) Information or data requested by HUD; or

(c) 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 RAB and resident council, if any, of the project (that will be affected by the proposed demolition and/or disposition as required in § 970.9), and appropriate government officials as required in § 970.7.

**§ 970.31 Effect on 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.

**§ 970.33 Demolitions due to emergency, disaster, or accidental loss.**

(a) A PHA may demolish a project without HUD approval if a project suffers abrupt damage from an Emergency, Major Disaster, or other event outside of the control of the PHA to the extent necessary to maintain the project in a safe condition or to eliminate an unattractive nuisance, and to the extent such demolition is permitted by section 13 of the ACC and § 970.3(b)(16). For funding requirements under the Capital Fund related to emergencies and disasters, the requirements of 24 CFR part 905 apply.

(b) If the PHA rebuilds the same number of dwelling units or non-dwelling structures that comprised the demolished project, the demolition (and any additional demolition required to carry out the redevelopment) shall not be subject to this part.



(c) If the PHA decides not to rebuild the same number of structures with the same number of units at the project, the PHA shall submit a demolition application under this part within one year of such demolition to formalize, and request official HUD approval for the action under this part, unless HUD specifically authorizes, in writing, a lesser number of units. If the PHA decides to rebuild fewer structures at the project, regardless of the number of units, the PHA shall submit a demolition application under this part within one year of the action.

**§ 970.35 Removal of all projects in the PHA's public housing inventory.**

If a proposed disposition action (or combined demolition and disposition action) will remove all projects (including dwelling units, non-dwelling structures, and underlying land) in a PHA's public housing inventory and the PHA has no plans to develop any additional projects, the following additional provisions apply:

(a) Operating Funds. After the disposition is complete, the PHA shall not expend any remaining Operating Funds (including operating reserves) other than for purposes related to the close-out of its public housing inventory, including audit requirements required by this section. Any remaining Operating Funds (including operating reserves and any unspent asset-repositioning fees received pursuant to 24 CFR 990.190) shall be returned to HUD within 90 days of the date of disposition of the project.

(b) Capital Funds. (1) If the project will not be retained as public housing after the disposition is approved, the PHA may spend no more of its Capital Funds without HUD approval, and then only if the amounts are required to close out contract obligations incurred prior to HUD's approval of the disposition and/or to address imminent health and/or safety issues that arise at the project prior to completion of the disposition transaction. However, if the disposition was approved for disposition at below fair market value based on commensurate

public benefit, prior to expending Capital Funds for the purposes permitted in this section, the PHA must notify HUD in writing of the planned expenditure of Capital Funds so that HUD can determine if any changes are necessary to the terms of its commensurate public benefit, if the disposition price should be adjusted to reflect the expenditure of funds, or both.

(2) No Capital Funds may be expended after the date of disposition of the project and any remaining Capital Funds shall be returned to HUD within 180 days of such date of disposition. The PHA shall be ineligible to receive any Capital Funds (replacement housing factor funds) under 24 CFR 905.10(i), and any funds issued under this section shall be recaptured by HUD.

(c) If a PHA owns any equipment or other personal property that it acquired or has maintained with 1937 Act funds, which property was not included in the disposition of all projects in its inventory or any particular project to which the equipment or personal property appertained, the PHA shall, within 60 days after the disposition, dispose of all such remaining personal equipment and other personal property in its inventory that was acquired in whole or in part with 1937 Act funds pursuant to a plan acceptable to HUD.

(d) Within 90 days of the date of disposition, the PHA must have an independent audit conducted on the close-out of its public housing inventory.

**§ 970.37 Reports and records.**

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

(1) Date of execution 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 executing such contract;

(2) Date of 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) A report, in a form and frequency prescribed by HUD (until HUD determines that the report no longer needs to be submitted), containing the following information:

(i) A description of resident relocation and timetable, including:

(A) The number of families actually relocated by bedroom size and the types and locations (including census tract) of comparable housing offered to each family;

(B) A description of the Fair Housing Act protected classes of relocated residents;

(C) Reasonable accommodations that were provided to residents in connection with the comparable housing, in accordance with Section 504 of the Rehabilitation Act of 1973;

(D) Units where residents were relocated that meet federal accessibility standards or that otherwise contain accessible features;

(E) The status of the Opportunity to Return Plan, including residents who express an interest in the plan; and

(F) The comparable housing that was offered to families that include a member with a disability that was located in a non-segregated setting. If such a family was not offered comparable housing in a non-segregated setting, the PHA must explain why the comparable housing that it offered was the most integrated setting appropriate for the family (i.e., the setting that enables the family member with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services);

(ii) A description of the PHA's use of the proceeds of disposition by providing a financial statement showing how the gross and net proceeds were expended by item and dollar amount, as approved by HUD;

(iii) A description of any remaining disposition proceeds, including current balance (plus interest), bank information of where such proceeds are being held, and plans for expending such proceeds for the use approved by HUD within the required timeframe;

(iv) For dispositions approved by HUD at less than fair market value based on commensurate public benefit, a description of the current use of the property (e.g., owner, number of housing units developed), and a statement of how the property is being used for the HUD-approved use; and

(v) A description of whether any project-based voucher contracts under Section 8 of the 1937 Act have been executed on a former public housing property approved for disposition and/or at housing developed, acquired, or constructed with disposition proceeds; and

(vi) Evidence that an audit has been conducted on the demolition and/or disposition within 3 years of completion of the demolition and/or disposition action; and

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

(b) [Reserved]

## **Subpart B – Real Property Transactions: Retention of Projects by Public Housing Agencies**

### **§ 970.39 Definitions.**

All definitions in § 970.5 shall apply to this subpart.

### **§ 970.41 Applicability.**

This subpart applies when a PHA proposes to retain ownership of a project without public housing DOT and ACC restrictions (e.g., clean title) in accordance with 24 CFR 85.31. This subpart is an alternative to disposing of projects under subpart A of this part and is another option available to PHAs to determine the future of their public housing stock. Actions under this subpart may especially assist PHAs in preserving their public housing stock.

**§ 970.43 Removal of a project from public housing without a transfer to a third party.**

(a) General. HUD's regulations at 24 CFR 85.31 provide that except as otherwise provided by federal statutes, real property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee shall not dispose of or encumber its title or other interests. When real property is no longer needed for the originally authorized purpose, the grantee will request disposition instructions from HUD. Section 18 of the 1937 Act and subpart A of this part covers the procedures that PHAs must follow if they choose to sell or otherwise transfer title of the property, except as stated in § 970.43(b).

(b) Retention of property (no PHA transfer of title). Section 85.31 of HUD's regulations (24 CFR 85.31) permits a PHA to retain title of real property that is no longer needed for its originally authorized purpose, provided the PHA requests and is approved by HUD to retain the property. In order to approve a request under this section, HUD will generally require the PHA to compensate HUD for the federal government's equity in the project (computed by applying HUD's percentage of participation in the cost of the original purchase or construction to the FMV of the property and subsequent modernization), but the PHA could request an exception to this repayment requirement, for good cause, in accordance with 24 CFR 85.6(c). If HUD finds the PHA has shown good cause for retaining the project under this section, HUD will release the ACC and DOT on the project. HUD's approval may require the PHA to enter into certain use

restrictions, or may impose other requirements to ensure that the property is used for the HUD-approved purposes for a certain length of time.

**§ 970.45 Specific criteria for HUD approval of requests under this subpart.**

(a) Minimum requirements. The PHA shall comply with HUD requirements and application procedures relative to this subpart. At a minimum, to obtain HUD approval under this subpart, a PHA must demonstrate that:

- (1) The project is no longer needed for the operation of public housing; and
- (2) There is good cause for the action (and, if applicable, for any request for an exception to the repayment requirement).

(b) Retention requests. HUD may accept retention of title requests under this subpart in three instances:

- (1) Retention of projects that include dwelling units (e.g. in order to leverage the property or attach project-based assistance under section 8 of the 1937 Act), as well as appurtenant equipment, and personal property, in accordance with all program requirements, so that the project can be better operated and maintained as long-term low-income housing;
- (2) Retention of vacant land (e.g., to retain limited green-space as part of a mixed-finance redevelopment); and
- (3) Retention of a central warehouse building or other non-dwelling structure (e.g., if the structure is no longer needed).

(c) Form of application. Applications for retentions under this part shall be submitted in the form and manner prescribed by HUD. The supporting information shall include:

- (1) A certification that the PHA has specifically authorized the retention action in its PHA Plan or significant amendment to that plan unless the PHA is a Qualified PHA under the

Housing and Economic Recovery Act of 2008 (HERA), and the proposed action is consistent with any plans, policies, assessments, or strategies prepared pursuant to the PHA Plan, such as the deconcentration plan (24 CFR 903.2) and the obligation to affirmatively further fair housing (42 U.S.C. 3608(e)(5)). In the case of a qualified PHA, the PHA must describe the proposed retention at its required annual public hearing (or a second public hearing if it determines to submit an application for retention between its annual public hearings). Qualified PHAs must also comply with §§ 970.12 and 970.7(c)(19) regarding civil rights and fair housing requirements in connection to 24 CFR part 903 and PHA Plans;

(2) A description of all identifiable property (including dwelling and non-dwelling units, bedroom size, and whether the units meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8, other improvements, and land (acreage and legal description) in the project proposed for retention; and equipment and personal property appurtenant to the project proposed for retention;

(3) The number of vacant units proposed for retention and a narrative explanation for the reasons for the vacancies (e.g., health/safety issues, occupancy consolidation, emergency relocation due to disaster);

(4) A description of the future ownership structure of the project by the PHA (e.g., fee title by the PHA, ownership by the PHA's instrumentality, ownership by a Limited Partnership or LLC that is controlled by the PHA);

(5) The anticipated future use of the project after HUD approval under this part, including any rehabilitation of units and/or demolition and any anticipated subsidies (e.g., low-income housing tax credits Section 8 project-based vouchers, Section 8 tenant-based vouchers) that the

PHA expects will be used for future dwelling that will be operated as housing for low-income families on the site of the former project;

(6) A general timetable for the proposed action, including the anticipated relocation start date, if applicable, and the anticipated transfer date to an instrumentality, limited partnership or LLC, if applicable;

(7) A statement and other supporting documentation justifying the proposed action, including a statement justifying a waiver to the repayment provision of 24 CFR 85.31 based on 24 CFR 85.6(c) if applicable. Such a statement shall include:

(i) A detailed description of the proposed future use of the project, including a description of any housing that will be located on the property after de-federalization under this part, including the number of units, bedroom sizes, accessibility, affordability, and priorities for displaced residents;

(ii) The proposed length of time in which the PHA will maintain the former project for the proposed future use (HUD will generally require the proposed future use remain as such for not less than 30 years, but will consider other factors such as the extent of public benefits (e.g., number of affordable units) arising from the proposed action of the property in determining if a period of less than 30 years is acceptable); and

(iii) The proposed legal documentation (e.g., use restriction, provision in ground lease, declaration of restrictive covenant) the PHA proposes to ensure the approved use.

(8) A description of any displacement of residents (temporary or permanent) that will occur based on this action, along with a certification that the PHA will comply with the URA and has a written relocation plan on file at its central office that includes:



- (i) The estimated number of individual residents and families to be displaced, if any (and whether the relocation is temporary or permanent);
  - (ii) The housing resources the PHA will provide to displaced residents, if any; and
  - (iii) The type of housing counseling services, including mobility counseling, to be provided to displaced residents, if any;
  - (iv) An estimate of the costs for housing counseling services and resident relocation, and the expected source for payment for these expenses;
  - (v) A plan for determining the housing needs of any displaced residents with disabilities and offering them comparable housing that includes the accessibility features needed by the resident with a disability in the most integrated setting appropriate for the resident (i.e., the setting that enables the resident with a disability to interact with non-disabled persons to the fullest extent possible and have access to community-based services);
- (9) A description with supporting evidence of the PHA's consultations with any residents who are residing in the project; the resident council (if any), the resident management corporation for the project, if any; the PHA-wide resident organization, if any; and the Resident Advisory Board (RAB). Supporting evidence shall include: a description of the process of the consultations summarizing the dates, meetings, and issues raised by the residents and the PHA's responses to those issues; meeting sign-in sheets; any written comments submitted by affected residents/groups along with the PHA's responses to those comments; any certifications or other written documentation that the PHA receives from the RAB (or equivalent body) and resident council regarding resident support or opposition; a description and/or documentation evidencing that the PHA communicated with affected residents and other required groups in a manner that was effective for persons with hearing, visual, and other communications-related disabilities

consistent with 24 CFR 8.6 and that public hearing facilities and services were physically accessible to persons with disabilities, and that appropriate translations were provided for Limited English Proficient (LEP) individuals;

(10) Where the PHA is requesting a waiver of the requirement for the application of proceeds for repayment of outstanding development debt, the PHA must request such a waiver in its application. However, modernization debt, such as Capital Fund Financing Program (CFFP) debt, Energy Performance Contracting (EPC) debt, and Operating Fund Financing Program (OFFP) debt cannot be waived and repayment is required;

(11) In the case where the PHA has applied for and/or been approved for financing under any HUD program (including CFFP, the OFFP, and the EPC program) or any other financing requested pursuant to section 30 of the 1937 Act (42 U.S.C. 1437z-2)), a legal opinion that the proposed retention action is permitted pursuant to the legal documentation associated to that program;

(12) A copy of a resolution by the PHA's Board of Commissioners approving the retention under this part;

(13) Evidence that the application was developed in consultation with local government officials. Supporting evidence should include a signed and dated letter in support of the application from the chief executive officer of the unit of local government;

(14) An approved environmental review of the proposed action under this part in accordance with 24 CFR part 50 or 58, including acting in accordance with the applicable environmental justice principles;

(15) A civil rights certification in a form and manner prescribed by HUD whereby the PHA certifies:

(i) A description of how the proposed action under this part will help the PHA meet its affirmative obligations including, but not limited to, the obligation and to overcome discriminatory effects of the PHA's use of 1937 Act funds pursuant to part 1 of this title and the obligations to deconcentrate poverty (24 CFR part 903, subpart A) and affirmatively further fair housing (42 U.S.C. 3608(e)(5); and

(ii) It does not have any outstanding charges from HUD (or a substantially equivalent state or local fair housing agency) concerning a violation of the Fair Housing Act or substantially equivalent state or local fair housing law proscribing discrimination because of race, color, religion, sex, national origin, disability, or familial status.

(iii) It is not a defendant in a Fair Housing Act lawsuit filed by the Department of Justice;

(iv) It does not have outstanding letters of findings identifying noncompliance under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974; and

(v) It has not received a cause determination from a substantially equivalent state or local fair housing agency concerning a violation of provisions of a state or local law proscribing discrimination in housing based on sexual orientation, gender identity, or source of income;

(vi) Additional supporting information that may be requested by HUD, if applicable, that shows that the proposed action will not maintain or increase segregation on the basis of race, ethnicity, or disability and will not otherwise violate applicable nondiscrimination or equal opportunity requirements, including a description of any affirmative efforts to prevent discriminatory effects;

(16) A certification that the PHA will comply with this part and the terms and conditions of the HUD retention approval, including, if applicable, monitoring the future use of a former project, for compliance with HUD’s approval; and

(17) Any additional information requested by and determined to be necessary to HUD to support the proposed retention action, and to assist HUD in making a determination to approve or disapprove the application under this part.

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

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

**Authority:** 42 U.S.C. 1437t, 1437z-5, and 3535(d).

### **Subpart A -- Required Conversion of Public Housing Developments**

3. Revise § 972.103 to read as follows:

#### **§ 972.103 Definition of “conversion.”**

For purposes of this subpart, the term “conversion” means the removal of public housing units from the inventory of a PHA, and the replacement of the converted project or portion with tenant-based assistance. The term “conversion,” as used in this subpart, does not necessarily mean the physical removal of the public housing development.

### **Subpart B -- Voluntary Conversion of Public Housing Developments**

4. Revise § 972.203 to read as follows:

#### **§ 972.203 Definition of “conversion.”**

For purposes of this subpart, the term “conversion” means the removal of public housing units from the inventory of a PHA, and the replacement of the converted project or portion with

tenant-based assistance. The term “conversion,” as used in this subpart, does not necessarily mean the physical removal of the public housing development.

Dated: October 3, 2014.

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Jemine A. Bryon,  
Acting Assistant Secretary for Public  
and Indian Housing.

**[FR-5399-P-01]**

**[FR Doc. 2014-24068 Filed 10/15/2014 at 8:45 am; Publication Date: 10/16/2014]**