

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****24 CFR Part 972**

[Docket No. FR-4475-F-02]

RIN 2577-AC01

**Required Conversion of Developments
From Public Housing Stock**

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

ACTION: Final rule.

SUMMARY: This final rule implements section 537 of the Quality Housing and Work Responsibility Act of 1998. Section 537 requires Public Housing Agencies (PHAs) to identify distressed public housing developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a plan to remove the development from its public housing inventory and convert it to tenant-based assistance. Since the cost methodology necessary to conduct the cost comparisons for required conversions has not yet been finalized, PHAs are not required to undertake conversions under this final rule until the effective date of the cost methodology. HUD is publishing a proposed rule elsewhere in today's **Federal Register** to provide the public with an opportunity to comment on the methodology that HUD proposes be used for the required cost comparisons. This final rule follows publication of a July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* March 15, 2004.

FOR FURTHER INFORMATION CONTACT: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4116, Washington, DC 20410-5000; telephone (202) 708-0713 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**I. Background***A. The July 23, 1999, Proposed Rule*

On July 23, 1999 (64 FR 40232), HUD published for public comment a proposed rule implementing section 537 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD

Appropriations Act; Pub. L. 105-276, approved October 21, 1998) (QHWRA). Section 537 of QHWRA added a new section 33 to the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). Section 33 requires Public Housing Agencies (PHAs) to annually review their public housing inventory and identify distressed developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a plan to remove the development from its public housing inventory and convert it to tenant-based assistance. In the July 23, 1999, proposed rule HUD proposed to implement the provisions for required conversions through the creation of a new 24 CFR part 972, subpart A.

B. Relationship to Required Conversion Under Section 202 of the FY 1996 HUD Appropriations Act

Section 537 of QHWRA also repealed section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 1437l *note*). Section 202 provided for a program of required conversion of distressed public housing. HUD implemented section 202 by issuing the regulations located at 24 CFR part 971. Although section 202 has been repealed, developments that were identified by PHAs or by HUD—before the enactment of QHWRA—for conversion, or for assessment of whether such conversion is required, continue to be subject to the requirements of section 202 and the part 971 regulations implementing that section until such requirements are satisfied. Thereafter, the provisions of this final rule apply to any remaining public housing on the sites of those developments.

C. Relationship to Voluntary Conversion

In addition to revising the statutory provisions for required conversions, QHWRA created a program of voluntary conversions. Section 533 of QHWRA revised section 22 of the 1937 Act, entitled "Authority to Convert Public Housing to Vouchers." A separate

proposed rule was published on July 23, 1999 (64 FR 40240), to implement these provisions through a new 24 CFR part 972, subpart B. The final rule that will make these amendments effective is published elsewhere in today's **Federal Register**.

II. This Final Rule

This final rule establishes regulatory policies and procedures for the program of required conversions authorized under section 33 of the 1937 Act. The final rule follows publication of the July 23, 1999, proposed rule and takes into consideration the public comments received on the proposed rule. The major changes made by this final rule to the July 23, 1999, proposed rule are summarized below.

A. General Changes

1. *Reorganization and clarification of required conversion requirements.* For purposes of clarity, this final rule reorganizes and consolidates several of the regulatory provisions contained in the proposed rule. For example, the final rule now groups all regulatory provisions concerning similar subject matter (such as the required conversion process and conversion plans) under headings that identify the subject of the related requirements. In addition, the final rule replaces the question and answer format used in the proposed rule with standard section headings that identify the subject of the regulatory provisions. Further, a new section (§ 972.106) has been added, which summarizes the required conversion process.

2. *Applicability of the Uniform Relocation Act.* The final rule adds a new § 972.118, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

B. Changes Regarding Identification of Developments Subject to Required Conversion

1. *Revised vacancy rate for purposes of determining distress.* HUD has revised the rule to provide that, for the first five years following the effective date of this final rule, a 15 percent vacancy rate will be used for purposes of determining whether a development is subject to required conversion. A 12

percent vacancy rate will be used after the expiration of this five-year period. The use of the 15 percent vacancy rate will allow PHAs and HUD to focus their conversion efforts on the most distressed public housing during the initial implementation of the final rule.

2. *Prevention of intentional vacancies.* The final rule adds a new provision that prevents the intentional creation of vacancies by PHAs for purposes of triggering a required conversion. Specifically, the final rule provides that vacant units will not be considered in the determination of distress if HUD, in its sole discretion, determines that the vacancies were created intentionally and do not indicate continued distress.

3. *Standards for distressed properties.* The final rule provides that a property that meets the standards for a distressed development will not be considered to be distressed if HUD determines that the reasons the property meets such standards are temporary in duration and are unlikely to recur.

4. *Income-mix standard.* HUD has revised the income-mix component of the long-term viability test to more closely track the statutory language of section 33. Specifically, the final rule provides that a development satisfies the income-mix requirements if, after reasonable investment for the specified period of time, it is probable that the development "can achieve a broader range of family income."

5. *Reasonableness of proposed revitalization costs for viability.* In order for a development to satisfy the long-term viability test, the proposed revitalization costs for viability must be reasonable. The proposed rule provided that the revitalization cost estimate contained in the PHA's most recent comprehensive plan for modernization should be used for this purpose. However, since HUD no longer requires comprehensive plans for modernization, this final rule provides that a PHA shall use the revitalization cost estimate contained in the PHA's most recent Annual Plan or 5-Year Plan, unless the PHA demonstrates, or HUD determines, that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs.

C. Changes Regarding Conversion Plan Requirements

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

2. *Schedule for the provision of moving expenses.* The final rule clarifies that any required conversion plan must

also include a schedule for providing actual and reasonable relocation expenses, as determined by the PHA, to families displaced by the conversion.

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

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

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

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

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

5. *Comparable housing in the form of tenant-based assistance.* The final rule revises the "comparable housing" requirements of the proposed rule to more closely track the statutory language of section 33 of the 1937 Act. Specifically, the final rule provides that families displaced as a result of conversion be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA. Further, if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon relocation of the family into such housing.

6. *Mobility counseling.* For purposes of clarity, this final rule specifies that the required PHA counseling to displaced families must include appropriate mobility counseling. The PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding.

7. *Certification of consistency with Consolidated Plan.* The final rule clarifies that if a PHA elects to satisfy the consultation requirements by certifying that its conversion plan is consistent with the Consolidated Plan, this certification may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

8. *Clarification of consultation requirements.* The final rule clarifies that the PHA must hold at least one meeting with the residents of the affected sites. The language of the proposed rule would have required one meeting between the PHA and residents, but was silent regarding the possibility of the PHA sponsoring additional meetings. This final rule also clarifies that the PHA must meet to discuss the required conversion with any duly elected resident council that covers the development in question.

9. *Incorporation of conversion plan in PHA Plan.* As provided in the July 23, 1999, proposed rule, this final rule requires that a PHA must submit any required conversion plan as part of the PHA's Annual Plan. Since the cost methodology necessary to conduct the required cost comparisons has not yet been finalized, this final rule provides that this requirement will not become effective until PHA fiscal years commencing six months after the effective date of the cost methodology. A proposed cost methodology was contained in HUD's July 23, 1999, proposed rule on voluntary conversions (although the methodology also applies

to required conversions). HUD has decided to significantly revise the cost methodology, based both on the public comments received on the voluntary conversion proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

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

While the cost methodology is being completed, PHAs may wish to prepare for required conversions by using the proposed methodology contained in the HUD proposed rule being published today. However, because the final methodology may differ from what is contained in the proposed rule, PHAs should not assume that the proposed cost test will be final with respect to possible required or voluntary conversions. HUD will revise the PHA Plan instructions to accommodate submission of any required conversion plan.

D. Change Regarding HUD Actions With Respect to Required Conversions

1. *Clarification of HUD Actions with Respect to Required Conversions.* The final rule clarifies the actions HUD will take if a PHA fails to properly identify a development for required conversion, or does not submit a conversion plan for a development in the PHA Annual Plan following the Annual Plan in which the development was identified as subject to required conversion. Specifically, the final rule provides that HUD will disqualify the PHA from HUD funding competitions and direct the PHA to cease additional spending in connection with a development that meets, or is likely to meet, the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety. HUD may also take any or all of the following actions: (1) Identify developments that fall within the statutory criteria where the PHA has

failed to do so properly; (2) take appropriate actions to ensure the conversion of developments where the PHA has failed to adequately develop or implement a conversion plan; (3) require the PHA to revise the conversion plan, or prohibit conversion, where HUD has determined that the PHA has erroneously identified a development as being subject to the requirements of this section; (4) authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency; and (5) any other action that HUD determines appropriate and has the authority to undertake.

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

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

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

A. Comments Regarding Standards for Identifying Public Housing Developments Subject to Required Conversion (§ 972.04 of the Proposed Rule; § 972.124 of This Final Rule)

The proposed rule at § 972.104 described the standards for identifying public housing developments subject to required conversion.

1. Comments Regarding the Required Vacancy Rate

Comment: Proposed definition of "distressed housing" failed to consider factors that may be relevant to

conversion. Three commenters wrote that the proposed vacancy rate was overly inclusive and did not comport with the guidelines established by the Commission on Severely Distressed Public Housing (hereafter "the Commission"). The commenters were concerned that viable developments would unfairly be required to conduct the required cost analysis. One of the commenters wrote that the proposed rule did not consider current market and employment conditions that affect the vacancy rate. The commenter also wrote that the proposed rule failed to address the fact that developments may become distressed due to lack of modernization funding. Another commenter wrote that the proposed 10 percent vacancy rate was too low, and noted that the Commission used a 15 percent vacancy rate.

HUD Response. HUD has revised the rule to be more sensitive to the concerns expressed by the commenters. Specifically, the final rule raises the vacancy rate used for purposes of determining distress from 10 percent to 15 percent for the first five years following the effective date of the final rule. A 12 percent vacancy will be used following the expiration of this five-year period. The purpose of the required conversion program is to identify those developments whose non-viability and cost, relative to vouchers, merit their permanent removal from public housing stock, even though the PHA did not previously decide to take this step on its own. The use of a higher vacancy rate better focuses required conversion on the situations where this step is most clearly needed.

Comment: Final rule should require that a PHA take remedial steps in those cases where the PHA has intentionally created vacancies. Two commenters wrote that the proposed vacancy criterion failed to consider whether a PHA has intentionally or artificially created vacancies at the development. According to the commenters, a PHA could create such vacancies by failing to make timely repairs or failing to lease available units. The commenters agreed that to "the extent that a PHA intentionally or artificially creates vacancies at a development, HUD should require the PHA to take corrective actions necessary to lease the units." One of the commenters suggested that HUD include an additional category of units that will not be considered in the vacancy determination—units that are intentionally vacant as a result of a PHA's desire to trigger mandatory conversion.

HUD response. HUD agrees that a rule change is required to prevent the intentional creation of vacancies. In response to these public comments, the final rule provides that vacant units will not be considered in the determination of distress if HUD determines, in its sole discretion, that the vacancies were created intentionally and do not indicate continued distress.

2. Comments Regarding the Long-term Viability Test

Comment: Requiring that PHAs meet all four long-term viability factors contradicts statute. Under the proposed rule, a PHA must meet four regulatory factors in order for a development to satisfy the long-term viability test. Specifically, the development, after reasonable investment for at least 20 years, must: (1) Be able to sustain structural/system soundness and full occupancy; (2) not be excessively densely configured relative to other similar (typically family) housing in the community; (3) be able to achieve a broader range of family income; and (4) have no other site impairments that clearly should disqualify the site from continuation as public housing. Two commenters wrote that this requirement is in direct conflict with section 33(a)(3)(A) of the 1937 Act. According to the commenters, the statute only requires that a development meet one of three statutory factors. The commenters urged that the final rule provide that a PHA may satisfy the long-term viability test if it meets any one of the regulatory factors.

HUD response. HUD does not agree with these commenters. The regulatory language is nearly identical to the statutory language of section 33(a)(3)(A). The regulatory provisions opposed by the commenters merely interpret and clarify this statutory language. The final rule continues to provide, as authorized by the statutory language of section 33, that a PHA must meet all the regulatory factors to satisfy the long-term viability test. Each of the factors measures a different and important aspect of a development's viability. Relying on only one of the factors, as the commenters suggest, would ignore the other elements necessary for an accurate assessment of a development's long-term integrity as public housing. Further, HUD believes that the factors are sufficiently flexible to address the concerns raised by the commenters regarding the strictness of the long-term viability test.

Comment: Density standard exceeds statutory language. The proposed rule provided that a development satisfies the long-term viability test if it is not

"excessively densely configured relative to standards for similar (typically family) housing in the community." One commenter wrote that the proposed standard exceeded the standard established under section 33(a)(3)(A) of the 1937 Act. The statute provides that the long-term viability test may be satisfied by "density reduction." The commenter wrote that the "statute does not authorize a test that compares the relative densities of the development and the surrounding neighborhood, but merely requires the current density of the development to be reduced."

HUD response. The use of relative density levels is consistent with the recommendations made by the Commission. The density reduction efforts of a PHA cannot be accurately evaluated without considering the density of comparable housing. For example, housing density varies among communities due to differences in local conditions, such as population, geography, and location of employment. Accordingly, this final rule continues to require that the density of a development be measured against the density of other similarly situated housing.

Comment: Income mix standard exceeds statutory standard. The proposed rule provided that a development satisfies the long-term viability test if it "will not constitute an excessive concentration of very low-income families." Two commenters wrote that the proposed standard exceeded the statutory standard set forth in section 33(a)(3)(A) of the 1937 Act. The statute provides that the long-term viability test may be satisfied by "the achievement of a broader range of family income." One of the commenters wrote that the "distinction is critical because a PHA can meaningfully broaden the income range and still have a resident population that is primarily very low-income." The second commenter wrote that "[g]iven that the analysis must project over a 20-year period, it is mere speculation to maintain that the site will be a candidate for additional mixing."

HUD response. In response to these public comments HUD has revised the income-mix component of the long-term viability test to more closely track the statutory language of section 33. Specifically, the final rule provides that a development satisfies the income-mix requirements if, after reasonable investment for the specified period of time, it is probable that the development "can achieve a broader range of family income."

Comment: "More expensive" criterion should be removed. A development

must be converted if it would be more expensive to modernize and operate the development for its remaining useful life than to provide tenant-based assistance to all residents. One commenter objected to this criterion for conversion. The commenter wrote that section 33 cites only to "reasonable modernization expenses." "There is nothing in the statute that suggests a development must be cheaper than Section 8 assistance in order to be viable in the long term."

HUD response. The regulatory language closely tracks the statutory language of section 33. Specifically, section 33(a)(3) provides that a development is subject to required conversion if the development is identified as distressed housing by the PHA, in accordance with HUD guidelines, and either: (1) The PHA cannot assure long-term viability; or (2) the development has an estimated cost (during its remaining useful life) of continued operation and modernization as public housing that exceeds the estimated cost (during its remaining useful life) of providing voucher tenant-based assistance for all families in occupancy based on appropriate indicators of cost (such as the percentage of total development costs required for modernization). Accordingly, HUD has not revised the proposed rule to adopt the suggestions made by the commenter.

3. Comments Regarding Issues for Which HUD Specifically Invited Public Comment

Although HUD invited public comments on all aspects of the June 23, 1999, proposed rule, the preamble to the proposed rule specifically solicited comments on two issues related to the standards for identifying developments subject to required conversion. HUD solicited comments on:

1. Whether the definition of "distressed housing" should include developments with less than 250 units or that are not primarily occupied by families; and

2. Whether a comparison of the average median income at a development with the average median income in the development's area, or other measure of tenant income, should be included in the identification of developments as distressed.

Comment: Final rule should not require conversion for developments with less than 250 units or that are not primarily occupied by families. Four commenters made this recommendation. According to one of the commenters, including developments with less than 250 units,

would impede local decision-making and further drain HUD resources. In addition, the commenter wrote that including smaller developments is unnecessary due to the voluntary conversion provisions of section 533 of QHWA. Smaller developments would be able to convert using the voluntary procedures of section 533 and HUD's implementing regulations.

HUD response. HUD agrees with the commenters. Accordingly, the final rule adopts the proposed rule provisions exempting developments with less than 250 units, or that are not primarily occupied by families, from the required conversion requirements. However, a PHA may elect to voluntarily convert such a development under the voluntary conversion program established by separate final rule published elsewhere in today's **Federal Register** (so long as the development satisfies the criteria for voluntary conversion).

Comment: Average median income comparison should not be required. One commenter objected to requiring PHAs to compare the average median income at a development with the average median income in the development's area. The commenter recognized that the Commission found this ratio highly significant. However, the commenter wrote that the measures included in the proposed rule are "more than sufficient for a reasonable person to draw the conclusions necessary." The commenter recommended that any use of the income ratio analysis should be at the option of the PHA. In addition, the commenter recommended that a PHA should be given the flexibility to gather and present such data using the methods and formats most useful to the PHA.

HUD response. HUD agrees with the commenter and has not revised the proposed rule to require a comparison of average median income.

B. Comments Regarding Standards for Determining Whether a Property is Viable in the Long Term (§ 972.105 of the Proposed Rule; § 972.127 of This Final Rule)

The proposed rule at § 972.105 described the conditions that a development must meet in order to satisfy the long-term viability standard.

Comment: PHAs should not be required to identify sources of funding. A PHA must identify the sources of funding for a revitalization program. One commenter wrote that this requirement is "unreasonable" because the "revitalization may be several years down the road and the PHA cannot determine what its annual appropriations will be or how much

money will be needed." The commenter suggested that the requirement be eliminated.

HUD response. HUD believes that an estimate of available funding is necessary to accurately assess the probable success of a revitalization plan. In recognition that PHAs receive capital funds by formula, the final rule permits PHAs to "assume that future formula funds provided through the Capital Fund over five years are available for this purpose" (see § 972.127(a)(3)). Nothing in this final rule prevents PHAs from applying for HOPE VI or other additional funding to assist in the revitalization or replacement of a development during the 5-year phase-out period. PHAs, however, may not assume that they will be successful in discretionary grant competitions, such as for HOPE VI funding. PHAs may apply for HOPE VI and other discretionary grants during the 5-year phase-out period, provided the use of such grants will be consistent with the requirements of this final rule.

C. Comments Regarding Conversion Plan Components (§ 972.107 of the Proposed Rule; § 972.130 of This Final Rule)

The proposed rule at § 972.107 described the various components of a conversion plan.

Comment: More notice of displacement should be required. The proposed rule would have required a PHA to notify families residing in the development 90 days before displacement. Two commenters wrote that if "displacement" is synonymous with a family vacating the unit, the 90-day notice is inadequate. The commenters wrote that a family may need more than 90 days to find and relocate to other affordable housing. The commenters also wrote that, under the Section 8 rental voucher program, families generally have 120 days to locate housing. Further, for families with school-age children, relocation during the school term will seriously disrupt the children's education and jeopardize related child-care arrangements. One of the commenters recommended that the final rule require PHAs to provide families with six months advance notice of their relocation rights, wherever feasible.

HUD response. In accordance with URA, this final rule provides that a family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing, in

accordance with the final rule. In addition, the final rule provides that, where Section 8 voucher assistance is being used for relocation, the vouchers must be provided to the family at least 90 days before conversion. PHAs should consider all relevant factors that might affect a family's ability to relocate (such as school age children) in determining the appropriate timeframes and should ensure that families are provided with adequate time to locate new housing.

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

HUD response. HUD has adopted the commenter's suggestion. The final rule adds a new § 972.118, which affirms that, to the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this final rule, the requirements of the URA, and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply. Further, for purposes of clarity, HUD has revised the rule to more closely conform to the notice requirements of the URA and the implementing regulations. As required by 49 CFR 24.203, if a required conversion is subject to the URA, PHAs must provide families scheduled to be displaced with a General Information Notice, a Notice of Relocation Eligibility or Notice of Non-displacement (as applicable), and a 90-day advance notice of the earliest date by which a resident may be required to move.

Comment: Final rule should clarify what constitutes housing choice for relocated families. Families have the right to be relocated to "other decent, safe, and sanitary and affordable housing that is, to the maximum extent possible, housing of their choice." Two commenters recommended that the final rule clarify that a family may choose "to lease any PHA rental unit of appropriate size, provided the rental unit is vacant or will be vacant before the date on which the tenant must vacate the converted rental unit."

HUD response. The regulatory language adequately protects a displaced family's right to relocate to comparable housing, while also providing for circumstances that may limit the availability of a particular unit. For example, a PHA may need to reserve a public housing unit for medical transfer purposes. The broad language suggested by the commenter fails to provide for such necessary exceptions.

Accordingly, HUD has not adopted the commenter's recommended change.

Comment: Standard for extension is overly restrictive. Generally, a conversion plan may not be more than a 5-year plan. However, HUD is authorized to provide a 5-year extension "in exceptional circumstances, where HUD determines that this is clearly the most cost-effective and beneficial means of providing housing over that same period." One commenter wrote that this is too restrictive, and inconsistent with section 33(c)(3) of the 1937 Act, which provides that HUD may grant an extension if it "determines that the deadline is impracticable."

HUD response. HUD does not agree that the regulatory language contradicts the statutory language of section 33. The statute provides HUD with broad authority to determine what circumstances make the 5-year deadline "impracticable" for a PHA. The final rule is consistent with the statutory goal of ensuring that most conversions be completed within the prescribed 5-year period, but grants HUD the necessary flexibility to address exceptional circumstances.

Comment: A fair housing impact assessment should be required. Two commenters recommended that the final rule should require the conversion plan to include an analysis of the effects of conversion on persons protected by the Fair Housing Act. The commenters wrote that even if a PHA is statutorily required to convert a particular development, HUD and the PHA have an obligation to avoid discriminatory impacts and to affirmatively further fair housing. One of the commenters suggested that the fair housing analysis should:

1. Consider the impact of conversion on each protected group: racial and ethnic minorities, persons with disabilities, and families with children;
2. Consider the impact not only on current residents, but also on persons likely to apply for housing;
3. Determine whether the proposed conversion will increase fair housing choice for each protected class, or perpetuate segregation;
4. Determine whether the proposed conversion will decrease fair housing choice (according to the commenter this would generally be true if the overall amount of assisted housing is reduced or if public housing units located outside high poverty areas with concentrations of minorities are converted);
5. Analyze the rate at which minority families and other protected groups are able to find housing under the Section 8 voucher program in areas that are

racially integrated and have low poverty rates; and

6. Analyze whether all families in housing proposed to be converted will receive housing assistance and be able to remain in the area if they choose.

HUD response. HUD has determined that the proposed rule adequately addressed fair housing considerations, and that a regulatory change is unnecessary. The conversion plan must be part of the PHA's Annual Plan. HUD's PHA Plan regulations require that a PHA certify that it will carry out its Annual Plan and 5-Year Plan in conformity with applicable statutory fair housing and nondiscrimination requirements and must affirmatively further fair housing. This, of course, includes any required conversion activities. As noted above, HUD has also added language to the final rule further emphasizing the need for adequate mobility counseling.

Comment: Conversion plan should include a well funded mobility program to ensure fair housing objectives are met. One commenter wrote that without such a program, most families will find themselves relocated to highly segregated communities with high levels of poverty.

HUD response. The final rule clarifies that a PHA must provide any appropriate mobility counseling in providing the required counseling to residents displaced by a conversion. The PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding.

D. Comments Regarding the Public and Resident Consultation Process for Developing a Conversion Plan (§ 972.110 of the Proposed Rule; § 972.133 of This Final Rule)

The proposed rule at § 972.110 required that a PHA consult with public officials and the residents of the affected sites in the development of the PHA's conversion plan.

Comment: Final rule should expand the resident and public participation process. One commenter recommended that the minimum standards for public and resident participation should be expanded. The commenter made various specific suggestions, including:

1. Requiring the PHA to consult with the development's resident council and the PHA-wide resident advisory board;
2. Requiring that the required meeting with residents take place at least 45 days before the PHA submits the conversion plan to HUD; and
3. Requiring that the consultation process include adequate notice to residents and an opportunity for

residents to comment. Further, HUD should require that a PHA give due consideration to all comments from residents and the public.

Another commenter emphasized the third suggestion made by the commenter above—that PHAs should be required to give due consideration to resident comments. The commenter wrote that this is necessary to allow the possibility that, based on resident comments, the PHA will determine that conversion is inappropriate. Further, if the PHA decides to proceed with conversion, then it should be required to consider the resident comments in the development of the final conversion plan.

HUD response. HUD agrees that meaningful public and resident input is essential to the success of the required conversion process. HUD does not believe that it is necessary to revise the proposed rule to adopt the suggestions made by these commenters. Existing regulatory requirements already ensure meaningful and timely public input in the development of the conversion plans. For example, the conversion plan must be part of the PHA's Annual Plan. The conversion plans, therefore, are subject to the extensive public participation requirements for the development of the PHA Annual Plans (see 24 CFR part 903). The consultation procedures established by this final rule supplement the PHA Plan consultation requirements; they do not replace them.

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

For purposes of clarity, HUD has made two changes to the consultation requirements of the rule. Specifically, the final rule clarifies that the PHA must hold at least one meeting with the residents of the affected sites. The language of the proposed rule would have required one meeting between the PHA and residents, but was silent regarding the possibility of the PHA sponsoring additional meetings. The final rule also clarifies that the public

housing residents with whom the PHA must meet include any duly elected resident council that covers the development in question.

Comment: Consolidated Plan requirements are inconsistent with statute. The proposed rule provided that a PHA “may satisfy the requirement for consultation with public officials by submitting a certification from the appropriate government official that the conversion plan is consistent with the applicable Consolidated Plan.” The rule also provided that “[t]his may be the same certification as is required for [the] PHA Annual Plan that includes the conversion plan.” According to one commenter this contradicts the statutory language of section 33. According to the commenter, section 33(c)(2)(B) requires that the PHA submit a separate certification from the relevant local official that specifically addresses the conversion plan. This certification is in addition to the certification that is part of the PHA Annual Plan (which is already required under section 33(c)(2)(A)).

HUD response. The final rule clarifies that if a PHA elects to satisfy the consultation requirements by certifying that its conversion plan is consistent with the Consolidated Plan, this certification may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

E. Comments Regarding Relationship Between Required Conversion and Demolition/Disposition Requirements (§ 972.113 of the Proposed Rule; § 972.112 of This Final Rule) Application

The proposed rule at § 970.113 described the applicability of the demolition/disposition requirements of section 18 of the 1937 Act to the required conversion process.

Comment: PHAs should be permitted to submit the conversion plan and disposition application at a later date than the PHA Annual Plan. One commenter wrote that requiring a PHA to simultaneously submit a PHA Annual Plan, conversion plan, and disposition application is unnecessarily burdensome and will not produce the best results. The commenter recommended that a PHA be allowed to submit the conversion plan and the disposition application at a later date than the PHA Annual Plan—either as a separate submission or as addenda to the Annual Plan.

HUD response. HUD has not revised the proposed rule to adopt the

commenter’s suggestion. The regulatory language closely tracks the statutory requirements of section 33. Specifically, section 33(h)(2) provides that the disposition requirements of section 18 of the 1937 Act apply to required conversions. Further, section 33(c)(2)(A) requires that a conversion plan be submitted as part of the PHA’s Annual Plan. However, neither section 33, or this final rule, requires a PHA to submit any required disposition application as part of the conversion plan or the Annual Plan. A PHA may elect to submit any disposition application subsequent to submission of the conversion plan. HUD may approve the conversion plan, even if the PHA has not yet submitted the required disposition application under section 18. However, the PHA may not proceed with the disposition until the required disposition application has been approved by HUD.

Comment: PHAs should not be required to submit separate disposition approval request. One commenter questioned the requirement for a separate disposition approval for required conversion, when HUD does not require it for voluntary conversions under section 533 of QHWRRA. In particular, the commenter objected to the requirement in those cases where: (1) The development has had its debt forgiven; (2) there have been no additional capital investments; and (3) the subsidy has been removed in the conversion process. “It would seem that under the circumstances, the property would be the PHA’s to deal with as it sees fit.”

HUD response. As noted in HUD’s response to the preceding comment, section 33 provides that the disposition requirements of section 18 of the 1937 Act apply to the required conversion program. The regulatory language of this final rule tracks this statutory requirement.

The final rule should clarify that HUD’s approval of a conversion plan is contingent on HUD’s approval of any disposition application for the converted units. One commenter wrote that it is unclear whether the proposed rule permits HUD to approve a conversion plan if the PHA’s disposition application does not comply with the requirements of section 18 of the 1937 Act. The commenter suggested that, to encourage compliance with section 18, the final rule should clarify that HUD’s approval of a conversion plan is contingent on approval of the PHA’s disposition application.

HUD response. As noted above, a PHA may elect to submit any disposition application subsequent to

submission of the conversion plan. HUD may approve the conversion, even if the PHA has not yet submitted the required disposition application. However, the PHA may not proceed with the conversion until its disposition application has been approved by HUD.

F. Comments Regarding the Relationship Between Required Conversion and HOPE VI Developments (§ 972.114 of the Proposed Rule; § 972.115 of This Final Rule)

The proposed rule at § 972.114 described the applicability of the required conversion requirements to HOPE VI developments.

Comments: HOPE VI recipients without an approved revitalization plan should not be required to conduct a viability assessment. HOPE VI developments without an approved revitalization plan are fully subject to the required conversion standards of 24 CFR part 972. One commenter objected to this requirement. The commenter wrote that requiring these HOPE VI developments to conduct a viability assessment is “extraordinarily redundant” because “each HOPE VI recipient was approved based on an application [that] included the number of units removed.” “Another evaluation is unnecessary, redundant, and impedes the implementation of HOPE VI.”

HUD response. Section 33 does not exempt HOPE VI developments from the required conversion requirements. Accordingly, HUD does not have the statutory authority to adopt the commenter’s suggestion. HUD will only approve HOPE VI revitalization plans that satisfy the conversion plan requirements.

G. Comments Regarding Funding To Assist Residents of Units Being Converted (§ 972.116 of the Proposed Rule; § 972.109 of This Final Rule)

The proposed rule at § 972.116 described how a PHA obtains funding to assist the residents of public housing developments converted to tenant-based assistance.

Comment: HUD should not require that funding for the first year of tenant-based assistance be provided from the Capital or Operating Funds. Two commenters objected to this provision. One of the commenters wrote that it would be unfair for HUD to expect PHAs to pay for one year of tenant-based assistance from the Capital and Operating Funds, since formula funding will have been reduced subsequent to the removal of the development from public housing inventory. The second commenter wrote that “[t]he effect of siphoning off and further reducing

public housing funds for tenant-based assistance will be the continued deterioration of public housing.” “[O]perating and capital funds are appropriated to ensure the preservation of public housing as an affordable housing resource and, as such, any funds attributable to developments identified for conversion should be re-invested in the public housing stock.”

HUD response. HUD has not adopted the change requested by the commenters. The final rule does not mandate that the initial year of tenant-based assistance be provided from the Capital and Operating Funds. Rather, the final rule, as did the proposed rule before it, merely provides for this possibility.

HUD should provide additional guidance regarding post-conversion. One commenter wrote that it would be helpful for HUD to clarify the timing of the phased process for substituting tenant-based assistance for assistance provided from the Capital and Operating Funds. Rather, the final rule, as did the proposed rule before it, merely provides for this subsidy for the units being converted.

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

H. Comments Regarding the Timing of Conversion (§ 972.122 of the Proposed Rule; § 972.109 of This Final Rule)

The proposed rule at § 972.122 provided that a PHA may proceed to convert a development only after receiving written approval from HUD. The approval will be separate from the one provided for the PHA Annual Plan.

Comment: HUD should establish a reasonable time frame for providing approval of a conversion plan. One commenter suggested that the final rule establish a 75-day period for HUD review and approval of conversion plans. According to the commenter, this “will enable PHAs to better plan relocation activities with residents and make adjustments necessary for the loss of subsidy.” The commenter wrote that a 75-day period would conform to the time frame established for HUD approval of the PHA Annual Plan.

HUD response. HUD has revised the rule to be more sensitive to the concerns raised by the commenter. The final rule clarifies that HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be

required where HUD’s initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 972.130, 970.133, and 972.136 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0234. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Impact on Small Entities

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

(1) *A Substantial Number of Small Entities Will Not be Affected.* The entities that are subject to this rule are public housing agencies that administer public housing. Under the definition of “small governmental jurisdiction” in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. Most PHAs with developments large enough to be subject to this final rule are located in larger political jurisdictions. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on larger troubled agencies.

(2) *No Significant Economic Impact.* The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property,

and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

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

Unfunded Mandates Reform Act

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

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled “Regulatory Planning and Review.” OMB determined that this rule is a

“significant regulatory action” as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Catalog of Federal Domestic Assistance Number

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

List of Subjects in 24 CFR Part 972

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

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

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

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

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

■ 2. Subpart A is added to read as follows:

Subpart A—Required Conversion of Public Housing Developments

Purpose; Definition of “Conversion”

Sec.

972.100 Purpose.

972.103 Definition of “conversion.”

Required Conversion Process

972.106 Procedure for required conversion of public housing developments to tenant-based assistance.

972.109 Conversion of developments.

972.112 Relationship between required conversion and demolition/disposition requirements.

972.115 Relationship between required conversion and HOPE VI developments.

972.118 Applicability of Uniform Relocation Act.

Identifying Developments Subject To Required Conversion

972.121 Developments subject to this subpart.

972.124 Standards for identifying public housing developments subject to required conversion.

972.127 Standards for determining whether a property is viable in the long term.

Conversion Plans

972.130 Conversion plan components.

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

972.136 Timing of submission of conversion plans to HUD.

HUD Actions With Respect To Required Conversions

972.139 HUD actions with respect to required conversions.

Subpart A—Required Conversion of Public Housing Developments

Purpose; Definition of Conversion

§ 972.100 Purpose.

The purpose of this subpart is to implement section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5), which requires PHAs to annually review their public housing inventory and identify developments, or parts of developments, which must be removed from its stock of public housing operated under an Annual Contributions Contract (ACC) with HUD.

This subpart provides the procedures a PHA must follow to develop and carry out a conversion plan to remove the units from the public housing inventory, including how to provide for the transition for residents of these developments to other affordable housing.

§ 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 provision of tenant-based or project-based assistance for the residents of the public housing units that are being removed. The term “conversion,” as used in this subpart, does not necessarily mean the physical removal of the public housing development.

Required Conversion Process

§ 972.106 Procedure for required conversion of public housing developments to tenant-based assistance.

(a) A PHA must annually review its public housing inventory and identify developments, or parts of developments, which must be converted to tenant-based assistance, in accordance with §§ 972.121–972.127.

(b) With respect to any public housing development that is identified under paragraph (a) of this section, the PHA generally must develop a 5-year plan for removal of the affected public housing units from the inventory, in accordance with §§ 972.130–972.136.

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

§ 972.109 Conversion of developments.

(a)(1) The PHA may proceed to convert the development covered by a conversion plan after receiving written approval from HUD. This approval will be separate from the approval that the PHA receives for its Annual Plan.

(2) HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD’s initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

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

(c) For purposes of determining operating subsidy eligibility, HUD will consider the conversion plan the PHA submits to be the equivalent of a formal request to remove dwelling units from the PHA’s inventory and ACC. HUD will notify the PHA in writing whether it has approved the conversion plan. Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title and also will be provided any phase-down of subsidy to which the PHA is entitled pursuant to § 990.114 of this title.

(d) The PHA may apply for tenant-based assistance in accordance with Section 8 program requirements, and HUD will give the PHA a priority for receiving tenant-based assistance to replace the public housing units. It is HUD’s policy to provide funds for one-for-one replacement housing with either public housing or tenant-based assistance, if funds are available. HUD

may require that funding for the initial year be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.112 Relationship between required conversion and demolition/disposition requirements.

(a) Section 18 of the United States Housing Act of 1937 does not apply to demolition of developments removed from the inventory of the PHA under this subpart. Demolition of these developments is therefore not subject to section 18(g), which provides an exclusion from the applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA). Accordingly, the URA will apply to the displacement of tenants as the direct result of the demolition of a development carried out pursuant to this subpart, in accordance with § 972.118. With respect to any such demolition, the PHA must comply with the requirements for environmental review found at part 58 of this title.

(b) Section 18 of the United States Housing Act of 1937 does apply to any disposition of developments removed from the inventory of the PHA under this subpart. Therefore, to dispose of property, the PHA must submit a disposition application under section 18. HUD's review of any such disposition application will take into account that the development has been required to be converted.

§ 972.115 Relationship between required conversions and HOPE VI developments.

HUD actions to approve or deny proposed HOPE VI revitalization plans must be consistent with the requirements of this subpart. Developments with HOPE VI revitalization grants, but without approved HOPE VI revitalization plans, are fully subject to required conversion standards under this subpart.

§ 972.118 Applicability of Uniform Relocation Act.

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

Identifying Developments Subject To Required Conversion

§ 972.121 Developments subject to this subpart.

(a) This subpart is applicable to any development not identified before October 21, 1998, for conversion, or for assessment of whether such conversion is required, in accordance with section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134, approved April 26, 1996, 110 Stat. 1321-279-1321-281). Developments identified before October 21, 1998, continue to be subject to the requirements of section 202 and part 971 of this chapter until these requirements are satisfied. Thereafter, the provisions of this subpart apply to any remaining public housing on the sites of those developments.

(b) The developments to which this subpart is applicable are subject to the requirements of section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z-5).

(c) The provisions of this subpart cease to apply when the units in a development that are subject to the requirements of this subpart have been demolished.

§ 972.124 Standards for identifying public housing developments subject to required conversion.

The development, or portions thereof, must be converted if it is a general occupancy development of 250 or more dwelling units and it meets the following criteria:

(a) *The development is on the same or contiguous sites.* This refers to the actual number and location of units, irrespective of HUD development project numbers.

(b) *The development has a vacancy rate of at least a specified percent for dwelling units not in funded, on-schedule modernization, for each of the last three years, and the vacancy rate has not significantly decreased in those three years.* (1) For a conversion analysis performed on or before March 16, 2009, the specified vacancy rate is 15 percent. For a conversion analysis performed after that date, the specified vacancy rate is 12 percent.

(2) For the determination of vacancy rates, the PHA must use the data it relied upon for the PHA's latest Public Housing Assessment System (PHAS) certification, as reported on the Form HUD-51234 (report on Occupancy). Units in the following categories must not be included in this calculation:

- (i) Vacant units in an approved demolition or disposition program;
- (ii) Vacant units in which resident property has been abandoned, but only

if state law requires the property to be left in the unit for some period of time, and only for the period of time stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted;

(iv) Units that are occupied by employees of the PHA and units that are used for resident services; and

(v) Units that HUD determines, in its sole discretion, are intentionally vacant and do not indicate continued distress.

(c) *The development either is distressed housing for which the PHA cannot assure the long-term viability as public housing, or more expensive for the PHA to operate as public housing than providing tenant-based assistance.*

(1) The development is distressed housing for which the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income. (See § 972.127)

(i) Properties meeting the standards set forth in paragraphs (a) and (b) of this section will be assumed to be "distressed," unless HUD determines that the reasons a property meets such standards are temporary in duration and are unlikely to recur.

(ii) A development satisfies the long-term viability test only if it is probable that, after reasonable investment, for at least 20 years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to other similar rental (typically family) housing in the community; can achieve a broader range of family income; and has no other site impairments that clearly should disqualify the site from continuation as public housing.

(2) The development is more expensive for the PHA to operate as public housing than to provide tenant-based assistance if it has an estimated cost, during the remaining useful life of the project, of continued operation and modernization of the development as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).

(i) For purposes of this determination, the costs used for public housing must be those necessary to produce a revitalized development as described in paragraph (c)(1) of this section.

(ii) These costs, including estimated operating costs, modernization costs, and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) The cost methodology necessary to conduct the cost comparisons for required conversions has not yet been finalized. PHAs are not required to undertake conversions under this subpart until six months after the effective date of the cost methodology, which will be announced in the **Federal Register**. Once effective, the cost methodology will be codified as an appendix to this part.

§ 972.127 Standards for determining whether a property is viable in the long term.

In order for a property to meet the standard of long-term viability, as discussed in § 972.124, the following criteria must be met:

(a) *The investment to be made in the development is reasonable.* (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost (TDC) limit for the units proposed to be revitalized (100 percent of the total development cost limit for any "infill" new construction subject to this regulation). The revitalization cost estimate used in the PHA's most recent Annual Plan or 5-Year Plan is to be used for this purpose, unless the PHA demonstrates, or HUD determines, that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and available. In addition to other resources already available to the PHA, it may assume that future formula funds provided through the Capital Fund over five years are available for this purpose.

(b) *Appropriate density is achieved.* The resulting public housing development must have a density which is comparable to that which prevails in or is appropriate for assisted rental

housing or for other similar types of housing in the community (typically family).

(c) *A greater income mix can be achieved.* (1) Measures generally will be required to broaden the range of resident incomes over time to include a significant mix of households with at least one full-time worker. Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Appropriate evidence typically would include census or other recent statistical evidence demonstrating some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

Conversion Plans

§ 972.130 Conversion plan components.

(a) With respect to any development that is identified under §§ 972.121 through 972.127, the PHA generally must develop a 5-year plan for removal of the affected public housing units from the inventory. The plan must consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and must provide for relocation from the units as soon as possible. For planning purposes, the PHA must assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan must include:

(1) A listing of the public housing units to be removed from the inventory;

(2) Identification and obligation status of any previously approved modernization, reconstruction, or other capital funds for the distressed development and the PHA's recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(3) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 972.133;

(4) A description of the plans for demolition or disposition of the public housing units; and

(5) A relocation plan, in accordance with paragraph (b) of this section.

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

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

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

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

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

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

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

(A) The development must be removed from the public housing inventory and that the family may be displaced as a result of the conversion;

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

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

(D) Such families will be relocated to other decent, safe, sanitary, and

affordable housing that is, to the maximum extent possible, housing of their choice;

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

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

(5) If the required conversion is subject to the URA, the written notice described in paragraph (b)(4) must also provide that:

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

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

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

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

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

(c) The conversion plan may not be more than a 5-year plan, unless the PHA applies for and receives approval from HUD for a longer period of time. HUD may allow the PHA up to 10 years to

remove the units from the inventory, in exceptional circumstances where HUD determines that this is clearly the most cost effective and beneficial means of providing housing assistance over that same period. For example, HUD may allow a longer period of time to remove the units from the public housing inventory, where more than one development is being converted, and a larger number of families require relocation than can easily be absorbed into the rental market at one time, provided the housing has a remaining useful life of longer than five years and the longer time frame will assist in relocation.

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

(a) The PHA must consult with appropriate public officials and with the appropriate public housing residents in developing the conversion plan.

(b) The PHA may satisfy the requirement for consultation with public officials by obtaining a certification from the appropriate government official that the conversion plan is consistent with the applicable Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for consultation with the appropriate public housing residents, in addition to the public participation requirements for the PHA Annual Plan, the PHA must:

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

(i) Explain the requirements of this section, especially as they apply to the residents of the affected developments; and

(ii) Provide draft copies of the conversion plan to the residents;

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

(3) Summarize the resident comments for HUD, in the conversion plan, and consider these comments in developing the final conversion plan.

§ 972.136 Timing of submission of conversion plans to HUD.

The requirements of this section are on-going requirements. If the PHA must submit a plan for conversion, it must submit the conversion plan as part of the PHA's Annual Plan, beginning with PHA fiscal years that commence six months after the effective date of HUD's final rule establishing the cost methodology for required conversions.

HUD Actions With Respect to Required Conversions

§ 972.139 HUD actions with respect to required conversions.

(a) HUD will take appropriate steps to ensure that distressed developments subject to this subpart are properly identified and converted. If a PHA fails to properly identify a development for required conversion, or does not submit a conversion plan for a development in the PHA Annual Plan following the Annual Plan in which the development was identified as subject to required conversion, HUD will take the actions described in paragraph (b) of this section, and may also take any or all of the actions described in paragraph (c) of this section.

(b) If a PHA fails to take the conversion activities described in paragraph (a) of this section, HUD will:

(1) Disqualify the PHA from HUD funding competitions; and

(2) Direct the PHA to cease additional spending in connection with a development that meets, or is likely to meet the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety.

(c) If a PHA fails to take the conversion activities described in paragraph (a) of this section, HUD may also take any or all of the following actions:

(1) Identify developments that fall within the statutory criteria where the PHA has failed to do so properly;

(2) Take appropriate actions to ensure the conversion of developments where the PHA has failed to adequately develop or implement a conversion plan;

(3) Require the PHA to revise the conversion plan, or prohibit conversion, where HUD has determined that the PHA has erroneously identified a development as being subject to the requirements of this section;

(4) Authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency; and

(5) Any other action that HUD determines appropriate and has the authority to undertake.

Dated: August 11, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

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

RIN 2577-AC02

Voluntary Conversion of Developments From Public Housing Stock

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

ACTION: Final rule.

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

DATES: Effective Date: March 15, 2004.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION:

I. The July 23, 1999, Proposed Rule

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

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

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

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

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

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

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

III. Cost Methodology for Conversions

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

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