

or the acquisition, development or rehabilitation of other properties to operate as low-income housing.

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

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

§ 970.10 Costs of demolition and relocation of displaced tenants.

Where HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under the Comprehensive Improvement Assistance Program (24 CFR part 968), the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§ 970.11 Replacement housing plan.

(a) *One-for-one replacement.* HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable rental dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application, except as pro-

vided in paragraph (j) of this section. A replacement housing plan may provide for the location of the replacement housing outside the political boundaries of the locality of the PHA, provided all relevant program requirements are satisfied including the approval of the replacement housing plan by the unit of general local government in which the project being demolished or disposed is located. In order to assure that all program requirements are satisfied, the PHA must enter into any necessary agreements, including where applicable, the execution of a Cooperation Agreement between the PHA and the locality in which the replacement housing will be located, prior to submission of the replacement housing plan to HUD for approval. In addition, the PHA must ensure that such agreements provide that the families selected for occupancy in the replacement housing will be families who would have been eligible for occupancy in the replacement housing if it had been replaced in the same locality as the project being demolished or disposed. The plan must include any one or combination of the following:

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

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

(3) The use of not less than 15-year project-based assistance under other Federal programs, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under other Federal programs having a term of not less than 5 years. (NOTE: In the case of 15-year project based assistance under other Federal programs, the Department has determined that low-income housing credits under Section 42 of the Internal Revenue Service Code is a

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

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

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

(ii) However, in the case of an application proposing demolition or disposition of 200 or more units, not less than 50 percent of the dwelling units for replacement housing shall be provided through the acquisition or development of additional public housing dwelling units or through project-based assistance, and not more than 50 percent of the additional dwelling units shall be provided through tenant-based assistance under section 8 (excluding vouchers) having a term of not less

than 5 years. The requirements of §970.11(b) do not apply to applications for demolition or disposition of 200 or more units that propose the use of tenant-based assistance under section 8 having a term of not less than 5 years for the replacement of not more than 50 percent of the units to be demolished or disposed of.

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

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

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

(3) To justify a finding under paragraph (b)(1) of this section, the PHA

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

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

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

the date of HUD approval of the demolition or disposition application.

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

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

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

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

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

(1) If units under the Public Housing Development Program or the Section 8 project-based assistance program have been requested as replacement housing in the PHA’s application, except when the PHA plans to build back on the same site, the site and neighborhood

§970.12

24 CFR Ch. IX (4-1-02 Edition)

standards applicable for those programs will apply and be assessed at the appropriate time as required by that program rule or handbook and not at the time of the demolition or disposition application. The PHA must certify to HUD at the time of application for demolition or disposition, that once the site is identified, the PHA will comply with the site and neighborhood standards applicable for those programs.

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

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

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

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

(4)(i) If the replacement housing units are to be provided out of the proceeds of the disposition of public housing property, and the site is known (including building back on the same

site), the PHA is required to comply with site and neighborhood standards comparable to part 941 of this chapter (or under part 882 of this title in the case of use of Section 8 assistance) when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

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

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

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

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

[60 FR 3719, Jan. 18, 1995]

§970.12 Required and permitted actions prior to approval.

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