

§972.115

(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 Revisions 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

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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.