

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 972

[Docket No. FR-4476-P-01]

RIN 2577-AC02

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

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

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a recent revision to the statute authorizing the public housing and Section 8 housing assistance programs to allow a Public Housing Agency (PHA) to convert any public housing project it owns to tenant-based assistance where the conversion would satisfy statutory objectives. If, after conducting a conversion assessment, the PHA determines that the following conditions are met, it may convert the project: Conversion will not be more expensive than continued operation of the project conversion will benefit residents and the community; and conversion will not adversely affect the availability of affordable housing in the community. The statute requires every PHA to conduct and submit to HUD a conversion assessment for its projects no later than October 1, 2001. However, HUD has the authority to exclude developments or categories of developments from the assessment requirement, or to streamline the conversion assessment requirements, and this rule does include streamlining for specified categories of developments.

DATES: *Comments Due Date:* September 21, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, 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; telephone (202) 708-0713 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Basis

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the "1937 Act"), as amended by section 533 of the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act; Public Law 105-276, approved October 21, 1998; 112 Stat. 2518-2680) (the "Public Housing Reform Act"), 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 economical, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing.

The statute requires a PHA to perform a conversion assessment as the first step toward the change. If that produces support for converting the units, the PHA may develop, and submit, a conversion plan to HUD. A PHA may convert the public housing only if the conversion plan has been approved by HUD. The statute also requires certain assessment actions be taken before October 1, 2001.

**II. Relationship of Voluntary
Conversions to Required Conversions**

This proposed rule would implement the voluntary conversion requirements set forth in section 22 of the 1937 Act through the creation of a new 24 CFR part 972, subpart B. Subpart A of new 24 CFR part 972 would implement section 537 of the Public Housing Reform Act, which added a new section 33 to the 1937 Act. New Section 33 sets forth provisions for the required conversion of distressed public housing to tenant-based assistance. HUD is implementing section 33 of the 1937 Act through a separate proposed rulemaking.

Section 202 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 1437l note) provided for a program of required conversion of distressed public

housing. HUD implemented that statute by issuing the regulations now found at 24 CFR part 971. In addition to creating new section 33, section 537 of the Public Housing Reform Act repealed section 202. However, those developments that have already been identified by PHAs or by HUD 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.

III. Description of Specific Sections

**A. Conversion Assessment
Requirements**

The Public Housing Reform Act requires that a PHA conduct a conversion assessment for each development that it operates as public housing. HUD is given the authority to exempt certain classes of developments from this requirement, or streamline the requirements of the conversion assessment. In this rule, HUD has streamlined the requirements of the conversion assessment, but requires that every PHA review and determine the best course of action with respect to each development that it operates as public housing.

Any PHA that has passed the Public Housing Assessment System (PHAS) physical conditions indicator must either conduct a conversion assessment for each public housing development, or certify that it has reviewed the operations of the development, and has determined that a full conversion assessment is unnecessary. Any PHA that has failed the PHAS physical conditions indicator must conduct a conversion assessment for each public housing development; however, a streamlined assessment may be conducted. The streamlined conversion assessment for these PHAs must include the cost analysis, comparing the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing, for each public housing development. This will ensure that the PHA, with respect to each development, at least makes and considers the threshold determination whether it is more economical to convert the public housing. Any PHA that intends to convert a development to tenant-based assistance must conduct the full conversion assessment, including all of the elements listed in § 972.209.

PHAs will be receiving their first PHAS scores at various times during the period for which conversion assessments are required. The last of

these scores would be received with ample time remaining in this period for PHAs to conduct the required streamlined assessments, in the event they fail the physical conditions indicator. PHAs that do not want to wait for PHAS scores, however, may fulfill the assessment requirement by conducting the streamlined assessments (cost test only) for each development.

HUD believes that Congressional intent was to ensure that every PHA review the operations of developments operated as public housing, and determine if conversion would be appropriate. The Senate Committee Report (S. Rep. No. 105-21, at 27 (1997)) states that this section "provides a framework for assessing the relative costs of tenant-based assistance and public housing so that PHAs can make informed judgements about their policies." At the same time, Congress did not intend for the requirements of a conversion assessment to place an undue burden on PHAs, and therefore gave HUD broad authority to waive or provide for streamlined assessments (S. Rep. No. 105-21, at 27 (1997)).

The certifications and streamlined assessments that HUD is proposing will fulfill both of these intentions. PHAs whose developments are most at risk, where HUD has found that the PHA's stock does not meet basic standards, must conduct a streamlined assessment, including the cost analysis. All others at least must consider the relative costs of public housing and vouchers with respect to each development. This will ensure that PHAs consider the most appropriate future action for all developments, and that PHAs with substandard physical conditions assess the relative costs of tenant-based assistance and public housing before determining the best course of action for each of these properties. HUD is considering the use of a web-based cost comparison calculator on HUD's internet homepage that would reduce the calculation burden on PHAs. HUD is also considering a refinement of the existing cost calculation in the appendix to part 972 to include a more precise net present value calculation.

A conversion assessment, or certification with respect to any development for which a conversion assessment is not necessary, must be submitted to HUD no later than October 1, 2001. PHAs should include the conversion assessments, or certifications as part of the next PHA Annual Plan to be submitted to HUD, after their completion. If the next PHA Annual Plan submission will not be submitted to HUD by October 1, 2001, a PHA must have the conversion assessment on file

by October 1, 2001, and include it in the next PHA Annual Plan submission. A PHA may otherwise elect to undertake a conversion assessment at any time for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

Although HUD believes that it has streamlined the conversion assessment in such a way that PHAs will not be burdened by the requirements, HUD specifically invites any comments regarding how the requirements for conversion assessments can more efficiently fulfill the purposes of this section.

A full conversion assessment is required for any PHA that seeks approval to convert a property to tenant-based assistance. A full conversion assessment includes the cost analysis, an analysis of the market value of the public housing, an analysis of the rental market conditions, an analysis of the likely impact of conversion on the neighborhood, and, if applicable, a description of any actions that will be taken to convert the public housing.

The cost analysis, which is required as part of the full conversion assessment, and is necessary to implement a conversion plan, uses the methodology currently used for purposes of required conversion requirements (See Appendix to 24 CFR part 971). The appendix to new part 972 would retain this comparison on a monthly cost basis; the results would not change if one calculated a net present value for the remaining useful life of the public housing, because the monthly costs for both public housing and tenant-based assistance would be multiplied by the number of months in question. In response to statutory language that the cost of public housing must be based on "the remaining useful life of the project," HUD has made one specific change to the methodology used for the cost analysis. This change is in the amount of time on which a PHA may amortize its modernization spending. In the current cost test, a PHA must use a time frame of twenty years in keeping with the expected life of the capital improvements (30 years if the work is equivalent to new construction). A PHA that is voluntarily conducting a conversion assessment and seeking approval for conversion may be permitted by HUD to use a time frame of less than 20 or 30 years, so long as the time frame is chosen in five year intervals (i.e. 5 years, 10 years, or 15 years), and the PHA provides HUD with a justification to why a shorter time frame is a reasonable estimate of the property's remaining useful life.

The cost analysis compares the cost of operating a revitalized public housing development with the cost of providing tenant based assistance to the residents of the public housing development. HUD realizes, however, that those PHAs wishing to voluntarily convert a development may not have a proposed revitalization plan. Further, HUD is concerned that those PHAs wanting to voluntarily convert a public housing development may not have sufficient incentive to fully consider whether that development could be revitalized, and in particular may not fully consider whether vacancies and operating costs could be reduced through the reasonable investment of funds in the development. Therefore, HUD is seeking comments on whether to give a PHA the option to:

1. Prepare a revitalization plan for the public housing development (for purposes of the cost analysis, the operating costs of the development would be based on the revitalization plan); or

2. For purposes of the cost analysis, assume that a revitalized development would result in a 10% reduction in current operating costs (this option would only be available to those PHAs that calculate current operating costs based on no greater than a 10% vacancy rate).

The statute states that the cost analysis should be conducted on both a net present value basis, and in terms of new budget authority. The appendix thus adds a calculation for new budget authority. The difference between that calculation and the calculation for net present value is that any capital investment in the public housing is not amortized over the remaining useful life in a manner that reflects the cost of expending the capital funds immediately. In order for a PHA to convert a public housing development, the cost of tenant-based assistance has to be less than the cost of public housing, both on a net present value basis, and based on new budget authority.

The analysis of market value requires that a PHA purchase independent appraisals. Although Congress states that it did not intend for PHAs to need expensive, new appraisals (S. Rep. No. 105-21, at 27 (1997)), under the proposed rule this part of the conversion assessment is not mandatory for any PHA except those that are planning to convert a public housing development to tenant-based assistance. HUD believes that appraisals are the most effective means to undertaking the required estimates of market value.

An analysis of the rental market conditions, and an analysis of the impact of conversion on the neighborhood must be included in the conversion assessment as well. PHAs should rely, to the greatest extent possible, on existing data sources. In addition, PHAs that are conducting a conversion assessment for more than one property may be able to use the same information and analyses in the assessments submitted to HUD.

HUD specifically invites comments on whether additional guidance should be given regarding how PHAs should conduct the analysis of rental market conditions and the analysis of the impact on the neighborhood and how these analyses relate to the PHA's obligation to affirmatively further fair housing.

B. Conversion Plan

In order for a PHA to convert a public housing development to tenant-based assistance, a PHA must submit, and HUD must approve a conversion plan. A conversion plan must be consistent with any settlement agreement that the PHA has entered into. A conversion plan must be submitted to HUD as part of the PHA Annual Plan submission. Although the conversion plan will be part of a PHA Annual Plan submission, the conversion plan will be subject to a separate approval from HUD. A separate approval is required because the standards for approval of the conversion plan differ from the standards for approval of the PHA Annual plan submission. A PHA may not proceed with conversion until it receives a separate written approval of its conversion plan from HUD.

A PHA may not demolish or dispose of units or property until completion of the required environmental review under 24 CFR part 58 (if a Responsible Entity has assumed environmental responsibility for the project) or 24 CFR part 50 (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 deprogramming and may authorize the PHA to undertake other activities proposed in the 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.

If a conversion plan is approved by HUD, the PHA may remove the public housing from the inventory and relocate

the residents using tenant-based or project-based assistance. If the PHA proposes in its conversion plan to demolish or dispose of the development, the conversion plan will serve as the demolition or disposition application, and a separate application will not be required by HUD. Alternatively, the PHA may retain ownership of the converted buildings as rental units or for other purposes.

Once a conversion plan is approved, tenants may be relocated using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance and the PHA will be given a priority for receiving tenant-based assistance. Although the statute also gives HUD the authority to consent to a transfer of the funds used for public housing to tenant-based assistance, HUD believes that the most direct way to fund the Section 8 tenant-based assistance is through annual appropriations. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD may require that funding for the initial year of tenant based assistance be provided from the new public housing Capital Fund, Operating Fund, or both.

IV. Issues Highlighted for Public Comment

Although HUD welcomes public comment on all aspects of this proposed rule, in particular it seeks comments on the following issues. Public comment is invited on this proposed rule in its entirety, including those issues discussed elsewhere in the preamble. All comments will be considered in the development of the final rule.

A. Use of Voluntary Conversion Process To Promote Housing Deconcentration

HUD requests comments on the possible use of the voluntary conversion process to promote deconcentration of assisted housing, through partial conversion to vouchers of public housing developments, and subject to compliance with the standards of this regulation. For example, a PHA might decide to retain one third of a large public housing development as public housing, and leverage private financing to renovate the development. Two thirds of the public housing units would be replaced with vouchers to be used elsewhere. If successful, such an approach might result in public housing in a mixed-income setting, vouchers used in a manner that deconcentrates poverty and renovation of private market units in an area that needs

revitalizing. Would such a result be desirable, financially feasible, or workable, in many situations? If such a result would be desirable, what would HUD need to do to promote it in appropriate situations?

B. Total Development Cost (TDC) Calculation

Section 520 of the Public Housing Reform Act made several changes to the requirements governing the Total Development Cost (TDC) limit for public housing development. Due to these changes, it may no longer be appropriate to use full TDC for accrual. It may be more appropriate to use a housing construction cost component of TDC. This reflects the idea that accrual should primarily be based on the hard costs of revitalization. Unlike TDC, housing construction cost does not include the soft costs associated with redevelopment, and therefore HUD believes that using housing construction cost may yield a better estimate of accrual. HUD may make this change at the final rule stage and specifically requests comment on this issue.

C. Impact of Conversion on Minorities and Persons With Disabilities

HUD requests comments on the best means to ensure that fair housing considerations are appropriately addressed during the voluntary conversion process. In particular, HUD requests comments on whether a description should be required, as part of a full conversion assessment, of the proposed conversion's impact on racial and ethnic minorities and persons with disabilities. This will assist the PHA to carry out its responsibilities under the nondiscrimination requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*) to affirmatively further fair housing.

V. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in §§ 972.209 and 972.217 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, 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.

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

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent*	Estimated average time for requirement (in hours)*	Estimated annual burden (in hours)
972.209	330	1	8	2,640
972.217	165	1.5	28	6,930
Total Reporting and Recordkeeping Burden (Hours)				9,570

* The number of responses and times estimated are averages.

Although the information collections are largely specified by section 22 of the United States Housing Act of 1937, HUD is nonetheless interested in receiving comments on the most efficient way to collect information necessary to reviewing the necessary elements of this conversion program. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4476) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503;

and
Mildred Hamman, Reports Liaison
Officer, Office of the Assistant
Secretary for Public and Indian
Housing, Department of Housing and
Urban Development, 451—7th Street,
SW, Room 4244, Washington, DC
20410

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 proposed 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 would be 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 few 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.

(2) *No Significant Economic Impact.* This rule requires PHAs to perform conversion assessments for certain developments using readily available data to determine whether those developments should be converted to tenant-based assistance. HUD has provided for streamlined assessments, including certifications for any PHA that has passed the Public Housing Assessment System (PHAS) physical conditions indicator and a conversion assessment limited to the cost analysis for other PHAs.

This is a one-time requirement as contemplated by the Public Housing Reform Act. Smaller PHAs will have fewer developments to consider, and the burden on them should consequently be proportionally smaller. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike.

Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made 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). The Finding of No Significant Impact 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, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule merely states the preconditions for a PHA to voluntarily convert a public housing development to tenant-based assistance. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

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 proposed 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, 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 Department's Rules Docket Clerk, Room 10276, 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 proposes to amend title 24 of the Code of Federal Regulations as follows:

1. Add part 972, subpart B and an appendix to part 972 to read as follows:

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

Subpart A—[Reserved]

Subpart B—Voluntary Conversion of Public Housing Developments

Sec.

- 972.201 What is the definition of "conversion"?
- 972.203 What is the purpose of this subpart?
- 972.205 What is the procedure for a PHA to follow if it wants to convert a public housing project to tenant-based assistance?
- 972.207 For what developments must a PHA perform a conversion assessment?
- 972.209 What does a conversion assessment contain?
- 972.211 When does a PHA submit a conversion assessment to HUD?
- 972.213 What conditions must be addressed in the conversion assessment that will allow HUD to approve conversion?
- 972.215 What is the public and resident consultation process for developing a conversion plan?
- 972.217 What are the components of a conversion plan?
- 972.219 When does a PHA submit a conversion plan to HUD?
- 972.221 What is the HUD process for approving the conversion plan?
- 972.223 What action does HUD take with respect to a PHA's conversion plan?
- 972.225 When may a PHA proceed to convert a development?

Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance

Authority: 42 U.S.C. 1437t, 14372-5, 3535(d).

Subpart A—[Reserved]

Subpart B—Voluntary Conversion of Public Housing Developments

§ 972.201 What is the definition of "conversion"?

For purposes of this subpart, the term "conversion" means the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the public housing that is being removed. The term "conversion," as used in this subpart, does not necessarily mean the physical removal of the public housing development.

§ 972.203 What is the purpose of this subpart?

This subpart implements section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t). The purposes of this subpart are to:

- (a) Require PHAs to perform an assessment which considers developments for which conversion of public housing may be appropriate; and
- (b) Provide a basis for a PHA to take action for conversion on a voluntary basis.

§ 972.205 What is the procedure for a PHA to follow if it wants to convert a public housing project to tenant-based assistance?

- (a) A PHA must perform a full conversion assessment, in accordance with §§ 972.209-972.211, and submit it to HUD as part of the next PHA Annual Plan submission.
- (b) A PHA must prepare a conversion plan, in accordance with § 972.217, and submit it to HUD, as part of the next PHA Annual Plan, within one year after submitting the conversion assessment.
- (c) A PHA may proceed to convert the project if HUD approves the conversion plan.

§ 972.207 For what developments must a PHA perform a conversion assessment?

(a) *General rule.* (1) *Required initial conversion assessment.* A PHA must conduct a full conversion assessment in accordance with § 972.209 for each development once during the period of October 1, 1999 through September 30, 2001, unless:

- (i) The development is subject to required conversion, under subpart A of this part or part 971 of this title;

(ii) The development is the subject of a plan for demolition that has not been disapproved by HUD; or

(iii) A HOPE VI revitalization grant has been awarded for the development.

(2) *Optional future conversion assessments.* A PHA may otherwise elect to undertake a conversion assessment at any time for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

(b) *Streamlined Assessment.* With respect to the required initial conversion assessment, the following streamlining will apply:

(1) *PHAs that have passed the Public Housing Assessment System (PHAS) physical conditions indicator.* (i) Any PHA that passes the physical condition component of PHAS (part 902, subpart B, of this chapter) may designate developments for which it will not conduct a conversion assessment.

(ii) In order not to assess a particular development, the PHA must certify that it:

- (A) Has reviewed the development's operation as public housing;
- (B) Considered converting the public housing to tenant-based assistance; and
- (C) Concluded that an assessment is unnecessary because conversion would not satisfy the three conditions necessary for voluntary removal set forth in § 972.213(a).

(iii) A PHA must maintain documentation of the reasoning with respect to each development for which it certifies that an assessment is unnecessary.

(2) *PHAs that fail the PHAS physical condition indicator.* (i) Any PHA that does not receive a passing score on the PHAS physical conditions indicator must conduct an assessment for each development except those listed in paragraphs (a)(1)-(3) of this section.

(ii) However, any PHA that is required to perform a conversion assessment for a development, may submit to HUD a streamlined conversion assessment that includes the cost analysis, comparing the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing, described at § 972.209(a).

(c) *Full assessment required for conversion.* A PHA must submit a full conversion assessment (not a streamlined assessment under paragraph (b) of this section) for any public housing project it wishes to convert to tenant-based assistance.

§ 972.209 What does a conversion assessment contain?

The conversion assessment contains five elements, as described below:

- (a) *Cost analysis.* A PHA must conduct a cost analysis comparing the

cost of providing Section 8 tenant-based assistance with the cost of continuing to operate the development as public housing for the remainder of its useful life. See the Appendix to this part for the required methodology for this cost analysis.

(b) *Analysis of the market value.* (1) A PHA must have an independent appraisal conducted to compare the market value of the development before and after rehabilitation. In both cases, the market value must be based on the use of the development as public housing.

(2) In addition, the appraisal must compare:

(i) The market value of the development before rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion; with

(ii) The market value of the development after rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion.

(3) A copy of the appraisal findings and the analysis of market value of the development in the conversion assessment must be provided in the conversion assessment.

(c) *Analysis of rental market conditions.* (1) A PHA must conduct an analysis of the likely success of using tenant-based assistance for the residents of the public housing development. This analysis must include an assessment of the availability of decent and safe dwelling units rented at or below the payment standard established for Section 8 tenant-based assistance.

(2) In conducting this assessment, a PHA must take into account:

(i) Its overall use of rental certificates or vouchers under lease and the success rates of using Section 8 tenant-based assistance in the community for the appropriate bedroom sizes; and

(ii) Any particular characteristics of the specific residents of the public housing which may affect their ability to be housed.

(d) *Impact analysis.* A PHA must describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located. This should include:

(1) The impact on the availability of affordable housing in the neighborhood; and

(2) The impact on the concentration of poverty in the neighborhood.

(e) *Conversion implementation.* If a PHA intends to convert the development (or a portion of it) to tenant-based assistance, the conversion assessment must include a description of any actions the PHA plans to take in

converting the development. This must include a general description of the planned future uses of the development, and the means, and timetable for accomplishing such uses.

§ 972.211 When does a PHA submit a conversion assessment to HUD?

(a) *Required initial conversion assessment.* (1) A PHA must submit a conversion assessment, or certification that a conversion assessment is unnecessary, for any development for which it is required under § 972.207(a) no later than October 1, 2001. The conversion assessment, or the certification that a conversion assessment is unnecessary, must be submitted to HUD as part of the next PHA Annual Plan after its completion. If the next PHA Annual Plan submission will not be submitted to HUD by October 1, 2001, a PHA must have the conversion assessment on file by October 1, 2001, and include it in the next PHA Annual Plan submission.

(b) *Optional future conversion assessments.* A PHA may otherwise elect to undertake a conversion assessment for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

(c) *Required updated conversion assessment.* Where a PHA proposes to convert a development to tenant-based assistance, it must submit an updated conversion assessment if the conversion assessment otherwise would be more than one year older than the conversion plan to be submitted to HUD. To update a conversion assessment, a PHA must ensure that the analysis of rental market conditions is based on the most recently available data, and must include any data that have changed since the initial conversion assessment. A PHA may submit the initial cost analysis and comparison of the market value of the public housing before and after rehabilitation and/or conversion if there is no reason to believe that such information has changed significantly.

§ 972.213 What conditions must be addressed in the conversion assessment that will allow HUD to approve conversion?

(a) *Conditions.* In order to convert a public housing development, the PHA must conduct a conversion assessment that demonstrates that the conversion of the development:

(1) Will not be more expensive than continuing to operate the development (or portion of it) as public housing;

(2) Will principally benefit the residents of the public housing development to be converted and the community; and

(3) Will not adversely affect the availability of affordable housing in the community.

(b) *Evidence.* (1) The relative expense of continuing operation as public housing or conversion to tenant-based assistance may be demonstrated by the cost analysis and market value analysis.

(2) The benefit to residents and the community may be demonstrated in the rental market analysis, the analysis of the impact on the neighborhood, the market value analysis, and the proposed future use of the development.

(3) The impact on affordable housing may be demonstrated in the rental market analysis and the analysis of the impact of conversion on the neighborhood.

§ 972.215 What is the public and resident consultation process for developing a conversion plan?

(a) A conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development.

(b) The requirement for consultation with public officials may be satisfied by obtaining a certification from the appropriate State or local officials that the conversion plan is consistent with that government's 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 significant participation by residents of the development, in addition to the public participation requirements for the PHA Annual plan, a PHA must:

(1) Hold a meeting with the residents of the affected sites at which the PHA:

(i) Explain the requirements of section 22 of the United States Housing Act and these regulations, especially as they apply to residents of affected developments; and

(ii) Provides draft copies of the conversion plan to them.

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

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

§ 972.217 What are the components of a conversion plan?

A conversion plan must:

(a) Describe the conversion and future use or disposition of the public housing development. If the future use of the development is demolition or disposition, the PHA is not required to submit a demolition or disposition application, so long as the PHA submits,

and HUD approves a conversion plan, which includes a description of the future uses of the development.

(b) Include a timetable, showing when any actions will be taken in converting the development, relocating the tenants, and when the future use will take place.

(c) Include an impact analysis of the conversion on the affected community. This may include the description that is required as part of the conversion assessment.

(d) Include a summary of the resident comments received when developing the conversion plan.

(e) Include the statement used to notify each family residing in the affected public housing 90 days before conversion that the development will no longer be used as public housing and to explain the benefits that will be offered, which must include at least the following information:

(1) The PHA will offer the family comparable tenant-based or project-based assistance that meets the Housing Quality Standards (HQS) for decent, safe and sanitary housing, and that is located in an area that is generally not less desirable than the displaced person's original development;

(2) The PHA will provide the family with actual and reasonable relocation expenses that they incur as a result of the conversion;

(3) The PHA will provide any counseling the family needs as a result of being displaced by the conversion; and

(4) If the development is used as housing after conversion, the PHA will ensure each resident may choose to remain in the housing, using tenant-based assistance towards rent.

(f) Confirm that any proceeds received from the conversion are subject to the limitations under section 18(a)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437p(a)(5)) applicable to proceeds resulting from demolition or disposition.

(g) Summarize why the conversion assessment for the public housing project supports the three condition necessary for conversion described in § 972.213(a).

§ 972.219 When does a PHA submit a conversion plan to HUD?

A PHA that wishes to convert a public housing project to tenant-based assistance must submit a conversion plan to HUD. A PHA must prepare a conversion plan, in accordance with § 972.217, and submit it to HUD, as part of the next PHA Annual Plan within one year after submitting the conversion assessment.

§ 972.221 What is the HUD process for approving the conversion plan?

Although a PHA will submit its conversion plan to HUD as part of the PHA Annual Plan, the conversion plan will be treated separately for purposes of HUD approval. A PHA needs a separate written approval from HUD in order to proceed with conversion. HUD will make reasonable efforts to respond to a conversion plan within 90 days.

§ 972.223 What action does HUD take with respect to a PHA's conversion plan?

(a) When a PHA submits a conversion plan to HUD, HUD will review it to determine whether:

(1) The conversion plan is complete and includes all of the information required under § 972.217; and

(2) The conversion plan is consistent with the conversion assessment the PHA submitted.

(b) HUD will disapprove a conversion plan only if HUD determines that:

(1) The conversion plan is plainly inconsistent with the conversion assessment;

(2) There is reliable information and data available to the Secretary that contradicts the conversion assessment; or

(3) The conversion plan is incomplete or otherwise fails to meet the requirements under § 972.217.

§ 972.225 When may a PHA proceed to convert a development?

(a) A PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. This approval will be separate from the approval that the PHA receives for its PHA Annual Plan. A PHA may apply for tenant-based assistance in accordance with Section 8 program requirements, and will be given priority for receiving tenant-based assistance to replace the public housing units.

(b) A 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 deprogramming and may authorize the PHA to undertake other activities proposed in the 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, the submitted plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC and approval (or acceptance). Units that are vacant or are vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title, and will also be provided the phase down of subsidy pursuant to § 990.114 of this title.

(d) HUD may require that funding for the initial year of tenant based assistance be provided from the new public housing Capital Fund, Operating Fund, or both.

Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance

I. Public Housing-Net Present Value

The costs used for public housing shall be those necessary to produce a revitalized development as described in the next paragraph. These costs, including estimated operating costs, modernization costs and costs to address accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis. The costs shall be expressed in current dollar terms for the period for which the most recent Section 8 costs are available.

A. Operating Costs

1. The proposed revitalization plan must indicate how unusually high current operating expenses (e.g. security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration and management structure of the revitalized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (PILOT) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the

number of units occupied by households. For example, if a development will have 1,000 units occupied by households and will have \$300,000 monthly in non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and \$100,000 monthly in utility costs paid by the authority and \$50,000 monthly in utility allowances that are deducted from tenant rental payments to the authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is \$450—the sum of \$300 per unit in non-utility costs, \$100 per unit in direct utility costs, and \$50 per unit in utility allowance costs.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized development are plausible, when the per-unit operating cost of the renovated development is more than ten percent lower than the current per-unit operating cost of development, then the plan should detail how the revitalized development will achieve its reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than twenty percent, then these costs will be divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are \$6.6 million and it has 1,000 occupied units and 200 vacant units not fully funded under PFS (or a 17 percent overall vacancy rate), then the \$6.6 million is divided by 1100—1000 plus 50 percent of 200—to give a per unit figure of \$600 per unit month. By this example, the current costs of \$600 per occupied unit are at least ten percent higher than the projected costs per occupied unit of \$450 for the revitalized development, and the reduction in costs would have to be detailed.

b. If the development currently lacks reliable cost data or has a vacancy rate of twenty percent or higher, then its current per unit costs will be estimated as follows. First, the per unit cost of the entire authority will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all vacant units not fully funded under PFS. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor of

the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors: .70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be 1.125—500 times 1.0 plus 500 times 1.25, the sum divided by 1,000. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per unit of \$500 and a bedroom adjustment factor of .90, and suppose that the development had a bedroom adjustment factor of 1.125. Then, the development's estimated current monthly operating cost per occupied unit would be \$625—or \$500 times 1.25 (the ratio of 1.125 to .90).

B. Modernization

The cost of modernization is the initial revitalization cost to meet viability standards, that cost amortized over twenty years (which is equivalent to fifteen years at a three percent annual real capital cost for the initial outlay). Expressed in monthly terms, the modernization cost is divided by 180 (or 15 years times 12 months). Thus, if the initial modernization outlay to meet viability standards is \$60 million for 1,000 units, then the per-unit outlay is \$60,000 and the amortized modernization cost is \$333 per unit per month (or \$60,000 divided by 180). However, when revitalization would be equivalent to new construction and the PHA thus is permitted to amortize the proposed cost over thirty years (which is equivalent to twenty-two and one-half years at a three percent annual real capital cost to the initial outlay), the modernization cost will be divided by 270, the product of 22.5 and 12, to give a cost per unit month of \$ 222.

C. Accrual

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits for the area and applying them to the development's structure type and bedroom distribution after modernization, then subtracting from that figure half the per-unit cost of modernization, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development will remain a walkup structure containing five hundred two-bedroom

occupied and five hundred three-bedroom occupied units, if HUD's Total Development Cost limit for the area is \$70,000 for two-bedroom walkup structures and \$92,000 for three-bedroom walkup structures, and if the per unit cost of modernization is \$60,000, then the estimated monthly cost of accrual per occupied unit is \$85. This is the result of multiplying the value of \$51,000—the cost guideline value of \$81,000 minus half the modernization value of \$60,000—by .02 and then dividing by 12.

D. Overall Cost

The overall current cost for continuing the development as public housing is the sum of its monthly post-revitalization operating cost estimates, its monthly modernization cost per occupied unit, and its estimated monthly accrual cost per occupied unit. For example, if the operating cost per occupied unit month is \$450 and the amortized modernization cost is \$333 and the accrual cost is \$85, the overall monthly cost per occupied unit is \$868.

E. Adjustment for Shorter Remaining Useful Life (Used Only for Voluntary Conversion—See Subpart B of This Part)

Where a PHA demonstrates that it is reasonable to use a remaining useful life of five, ten or fifteen years rather than twenty or thirty years, the PHA shall divide total modernization costs by 45 to determine the monthly per unit cost if a five year remaining useful life is used, 90 if a ten year remaining useful life is used, and 135 if a fifteen remaining useful life is used.

II. Public Housing-New Budget Authority (Used Only for Voluntary Conversion—See Subpart B of This Part)

This cost analysis shall be conducted in the same manner as the net present value analysis, with one exception. The total capital cost shall be divided by the total number of months in the remaining useful life used in the analysis (e.g. for a 20 year remaining useful life, divide the total capital cost by 240) rather than the lower denominator which reflects amortization of capital costs, taking into account the immediate expenditure of capital funds, in the net present value model.

III. Tenant-Based Assistance

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size; plus the most recent administrative fee applicable to newly funded Section 8 rental assistance during the year used for calculating public housing operating costs (e.g., the administrative fee for units funded in fiscal years 1995 and 1996 is the monthly administrative fee amount in column C of the January 24, 1995 **Federal Register** at 60 FR 4764); plus the amortized cost of demolishing the occupied public housing units, where the cost per unit is not to exceed ten percent of the TDC prior to amortization. For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market

Rent in the area is \$600 for two bedroom units and is \$800 for three bedroom units and if the administrative fee comes to \$46 per unit, and if the cost of demolishing 1000 occupied units is \$5 million, then the per unit monthly cost of tenant based assistance is \$774 (\$700 for the unit-weighted average of Fair Market Rents, or 500 times \$600 plus 500 times \$800 with the sum divided by 1,000; plus \$46 for the administrative fee; plus \$28 for the amortized cost of demolition and tenant relocation (including any necessary counseling), or \$5000 per unit divided by 180 in this example). In voluntary conversion, this Section 8 cost would then be compared to the cost of revitalized public housing development, both in terms of net present value and new budget authority—in the example of this section, both the revitalized public housing cost (net present value) of \$868 monthly per occupied unit, and the revitalized public housing cost (new budget authority) of \$785 monthly per occupied unit would exceed the Section 8 cost of \$774 monthly per occupied unit. Therefore, the PHA would have the option of preparing a conversion plan for the development under subpart B of this part.

In required conversion, the Section 8 cost would be compared with the cost of the revitalized public housing development on a net present value basis. In the example in this section, the revitalized public housing cost on a net present value basis of \$868 per month would exceed the Section 8 cost of \$774 monthly per occupied unit. Therefore the PHA would be required to convert the development under the requirements of subpart A of this part.

IV. Detailing the Section-8 Cost Comparison: A Summary Table

The section 8 cost comparison methods are summarized, using the example provided in this section IV.

A. Key Data, Development

The revitalized development has 1000 occupied units. All of the units are in walkup buildings. The 1000 occupied units will consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are \$300,000 per month in non-utility costs, \$100,000 in utility costs paid by the PHA, and \$50,000 in utility allowance expenses for utilities paid directly by the

tenants to the utility company. Also, the modernization cost for revitalization is \$60,000,000, or \$60,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition and relocation of the 1000 occupied units is \$5 million, or \$5000 per unit, based on recent experience.

B. Key Data, Area

The unit total development cost limit is \$70,000 for two-bedroom walkups and \$92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is \$600 and the three-bedroom Fair Market Rent is \$800. The applicable monthly administrative fee amount, in the most recent **Federal Register** Notice, is \$46.

C. Preliminary Computation of the Per-Unit Average Total Development Cost of the Development

This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at \$70,000 and five hundred units are valued at \$92,000 and the unit-weighted average is \$81,000.

D. Current Per Unit Monthly Occupied Costs of Public Housing (Net Present Value)

1. Operating Cost	\$450 (total monthly costs divided by occupied units: in this example, the sum of \$300,000 and \$100,000 and \$50,000—divided by 1,000 units).
2. Amortized Modernization Cost	\$333 (\$60,000 per unit divided by 180 for standards less than those of new construction).
3. Estimated Accrual Cost	\$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, \$51,000 times .02 and then divided by 12).
4. Total Per Unit Public Housing Costs	\$868.

E. Per Unit Monthly Occupied Costs of Public Housing (New Budget Authority)

1. Operating Cost	\$450 (total monthly costs divided by occupied units: in this example, the sum of \$300,000 and \$100,000 and \$50,000—divided by 1,000 units).
2. Modernization Cost	\$250 (\$60,000 per unit divided by 240 for standards less than those of new construction).
3. Estimated Accrual Cost	\$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, \$51,000 times .02 and then divided by 12).
4. Total Per Unit Public Housing Costs	\$785.

F. Current per Unit Monthly Occupied Costs of Section 8

1. Unit-weighted Fair Market Rents	\$700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times \$600 plus 500 times \$800, divided by 1000).
2. Administrative Fee	\$46.
3. Amortized Demolition and Relocation Cost	\$28 (\$5000 per unit divided by 180).
4. Total Per Unit Section 8 Costs	\$774.

G. Result

In this example, because revitalized public housing costs, both on a net present value basis, and based on new budget authority, exceeds current Section 8 costs, a conversion plan would be permissible under voluntary

conversion, Subpart B of this Section. Under required conversion, because revitalized public housing costs on a net present value basis exceed Section 8 costs, the PHA would be required to convert the public housing development under subpart A of this Section.

Dated: June 23, 1999.

Harold Lucas,
Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-18774 Filed 7-22-99; 3:35 pm]

BILLING CODE 4210-33-P