

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 972

[Docket No. FR-4476-F-03]

RIN 2577-AC02

Voluntary Conversion of Developments From Public Housing Stock; Required Initial Assessments

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

ACTION: Final rule.

SUMMARY: On July 23, 1999, HUD published for public comment a proposed rule to implement statutory changes authorizing Public Housing Agencies (PHAs) to convert a development to tenant-based assistance where the conversion would satisfy statutory objectives. The statute requires every PHA to conduct and submit to HUD an initial assessment for its development no later than October 1, 2001. Given this statutory deadline, HUD is issuing this final rule, which provides regulatory guidance on the preparation and submission of the required initial assessments in a streamlined, simplified form. The final rule also takes into consideration the public comments received on the initial assessment requirements contained in the July 23, 1999 proposed rule. HUD is currently developing its more comprehensive final rule on voluntary conversions, and expects to publish this final rule in the near future.

DATES: Effective Date: July 23, 2001.

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. Background

On July 23, 1999 (64 FR 40240), HUD published for public comment a proposed rule to implement 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 Fiscal Year 1999 HUD Appropriations Act; Public Law 105-

276, approved October 21, 1998) ("QHWRA"). 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 the relocation of, or the provision of tenant-based assistance to, the residents. 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. The July 23, 1999 proposed rule would implement the voluntary conversion requirements through the creation of a new 24 CFR part 972, subpart B.

Amended section 22 also requires every PHA to conduct and submit to HUD an initial assessment for its developments no later than October 1, 2001 (see section 22(b)(2) of the 1937 Act and § 972.207(a) of the July 23, 1999 proposed rule). However, the statute gives HUD the authority to exempt certain classes of developments from this requirement, or to streamline the requirements of the required initial assessment. In the proposed rule, HUD streamlined the requirements of the required initial assessment, but proposed to require that every PHA review and determine the best course of action with respect to each development that it operates as public housing.

Given the statutory deadline for submission of the required initial assessments, HUD is issuing this final rule, which provides regulatory guidance on the preparation and submission of these assessments in a streamlined, simplified form. The final rule also takes into consideration the public comments received on the proposed initial assessment requirements. HUD is currently developing its more comprehensive final rule on voluntary conversions, which will address all other public comments received on the July 23, 1999 proposed rule. HUD expects to publish this final rule in the near future.

Nothing in this final rule would preclude a PHA from converting a development (or portion of a development) at a later time, subject to the requirements that will be established in HUD's upcoming comprehensive final rule on voluntary conversions.

II. Significant Differences Between This Final Rule and July 23, 1999 Proposed Initial Assessment Requirements

For the convenience of readers, this section of the preamble briefly

summarizes the most significant differences between the initial assessment requirements contained in the July 23, 1999 proposed rule and the initial assessment procedures contained in this final rule. These revisions are discussed in greater detail elsewhere in this preamble. The major changes made by this final rule to the proposed initial assessment requirements are as follows:

A. Reorganization of Required Initial Assessment Requirements

For purposes of clarity, this final rule consolidates the regulatory provisions concerning the preparation and submission of the required initial assessments in a single section (§ 972.200). The July 23, 1999 proposed rule addressed these requirements in various sections (most significantly §§ 972.207 and 972.211).

B. Exemption of Elderly/Disabled Developments From Initial Assessment Requirements

The final rule exempts developments designated for occupancy by the elderly and/or persons with disabilities from the initial assessment requirements. HUD believes that few such developments are likely to be proposed for voluntary conversion, and that including such developments in the required initial assessment process is unnecessary and could be confusing to the public. The additional exemption also will alleviate burden on PHAs, and focus the initial assessments on family (i.e., general occupancy) developments which are more likely to merit consideration for voluntary conversion in some instances.

C. Further Streamlined Initial Assessment Procedures

The final rule expands the availability of the streamlined initial assessment process to all PHAs, not just those that have received passing scores on the physical condition indicator of the Public Housing Assessment System (PHAS). This is necessary because of the advisory status of prior PHAS scores. The proposed rule would have required that PHAs failing the PHAs physical conditions indicator conduct cost analyses comparing the cost of continuing to operate their developments as public housing with the cost of providing tenant-based assistance.

Irrespective of the results of the required initial assessments for particular developments, PHAs retain the discretion whether to propose any particular development for voluntary conversion at a later time.

III. Overview of Final Rule

A. General

This final rule implements the initial assessment requirements in a new § 972.200. A PHA must conduct a required initial assessment once for each of its developments, unless the developments falls under one of the four following categories:

1. The development is subject to required conversion under 24 CFR part 971;
2. The development is the subject of an application for demolition or disposition that has not been disapproved by HUD;
3. The development has been awarded a HOPE VI revitalization grant; or
4. The development is designated for occupancy by the elderly and/or persons with disabilities (i.e., is not a general occupancy development).

B. Certification Procedure

The final rule requires that a PHA certify that it has reviewed each development's operation as public housing and considered the implications of converting the public housing to tenant-based assistance. Further, the PHA must certify that, based on its review, the PHA has concluded that conversion of the development is likely to be either appropriate or inappropriate. Conversion of a public housing development is appropriate only if the PHA concludes that conversion will: (1) Not be more expensive than continuing to operate the development (or portion of it) as public housing; (2) principally benefit the residents of the public housing development to be converted and the community; and (3) not adversely affect the availability of affordable housing in the community.

C. Timing of Submission

The results of each required initial assessment (consisting of the certification described above) must be submitted to HUD as part of the next PHA Annual Plan after its completion. A PHA must maintain documentation of the reasoning with respect to each required initial assessment.

As noted, the statute provides that each PHA must prepare and submit their required initial assessments by October 1, 2001. HUD appreciates the impact of the timing of today's publication on PHAs' ability to complete the required initial assessments by the statutory deadline. HUD expects PHAs now to proceed expeditiously and responsibly to complete the required initial assessments.

IV. Discussion of Public Comments On Proposed Initial Assessment Procedures

The public comment period on the proposed rule closed on September 21, 1999. By close of business on this date, HUD had received 6 public comments on the proposed rule. Comments were submitted by a private citizen; 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 regarding the proposed initial assessment requirements and HUD's responses to these comments. HUD's comprehensive final rule on voluntary conversions will address the issues raised by the commenters on all other provisions of the July 23, 1999 proposed rule.

Comment: PHAS should not be used in the required initial assessment process. Three commenters opposed the use of the PHAS in the required initial assessment process. The commenters wrote that the PHAS "is not fully functional, and in many cases the results of the PHAS do not accurately reflect the quality of the building and its units." The commenters suggested that "no workload or official determinations [should] be made on the basis of PHAS until such time as the system" is fully in place. One of the commenters wrote that until the PHAS is finalized, all PHAs should be permitted to prepare fully streamlined assessments.

HUD Response. HUD has revised the proposed rule to adopt the suggestion made by these public commenters. The final rule expands the availability of the streamlined initial assessment process to all PHAs, not just those that have received passing scores on the PHAS physical condition indicator. 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. However, as noted elsewhere in this preamble, Congress did not intend for the initial assessment process to place an undue burden on PHAs, and therefore gave HUD broad authority to waive or provide for streamlined assessments. Allowing all PHAs to make use of the streamlined certification process for the one-time initial assessments will further both objectives. Although PHAs will no longer be required to conduct a full cost-analysis, each PHA must review and certify to the best course of action with respect to the developments that it operates as public housing.

Comment: PHAs should be allowed to submit a streamlined initial assessment consisting of a basic market study assessing the viability of market units for possible Section 8 assistance. One commenter wrote that "many smaller PHAs and market areas have little or no market units suitable or affordable for the Section 8 program." The commenter wrote that, under such circumstances, "no conversion plan however well developed would have any basis in reality." Therefore, the commenter urged that these PHAs be given the option of submitting a streamlined assessment consisting solely of a basic market study assessing the viability of market units for possible Section 8 assistance. "Given the nature of the localities and the PHA knowledge of the market, this assessment should not prove difficult as an option to the full cost analysis."

HUD Response. HUD has revised the proposed rule to be more sensitive to the concerns expressed by the commenter. As noted in the response to the preceding comments, HUD has streamlined the required initial assessment procedures for all PHAs.

V. Findings and Certifications

Public Reporting Burden

The information collection requirements for the voluntary conversion program 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 PHAs 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 PHAs 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 required initial assessments for their public housing developments using readily available data to determine whether those developments should be converted to tenant-based assistance. HUD has used its broad statutory authority to streamline the content of the required initial assessments. This is a one-time requirement as contemplated by QHWRA. 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.

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 20410.

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 Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

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 chapter IX of title 24 of the Code of Federal Regulations by adding 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.

972.200 Required initial assessments.

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

Subpart A—[Reserved]

Subpart B—Voluntary Conversion of Public Housing Developments

§ 972.200 Required initial assessments.

(a) *General.* A PHA must conduct a required initial assessment, in accordance with this section, once for each of its developments, unless:

(1) The development is subject to required conversion under 24 CFR part 971;

(2) The development is the subject of an application for demolition or disposition that has not been disapproved by HUD;

(3) A HOPE VI revitalization grant has been awarded for the development; or

(4) The development is designated for occupancy by the elderly and/or persons with disabilities (i.e., is not a general occupancy development).

(b) *Certification procedure.* For each development, the PHA shall certify that it has:

(1) Reviewed the development's operation as public housing;

(2) Considered the implications of converting the public housing to tenant-based assistance; and

(3) Concluded that conversion of the development may be:

(i) Appropriate because removal of the development would meet the necessary conditions for voluntary conversion described in paragraph (c) of this section; or

(ii) Inappropriate because removal of the development would not meet the necessary conditions for voluntary conversion described in paragraph (c) of this section.

(c) *Necessary conditions for voluntary conversion.* Conversion of a public housing development may be appropriate if the PHA concludes that conversion will:

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

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

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

(d) *Documentation.* A PHA must maintain documentation of the reasoning with respect to each required initial assessment.

(e) *Timing of submission.* Consistent with statutory submission requirements, the results of each required initial assessment (consisting of the certification described in paragraph (b) of this section) must be submitted to HUD as part of the next PHA Annual Plan after its completion.

Dated: June 12, 2001.

Mel Martinez,

Secretary.

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