DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 971

[Docket No. FR–4120–I–09]

RIN 2577–AB79

Assessment of the Reasonable Revitalization Potential of Certain Public Housing Required by Law

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

ACTION: Interim rule.

SUMMARY: On September 26, 1996, HUD published a notice implementing section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Section 202 requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory. The September 26, 1996 notice invited public comments. This interim rule takes into consideration the comments received on the September 26, 1996 notice and codifies the modified requirements in a new part 971.

DATES: Effective date: October 22, 1997.

Comment due date: November 21, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Senior Director for Policy and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (voice): (202) 708–0713 (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this interim rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0210. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. The September 26, 1996 Federal Register Notice

On September 26, 1996, the Department published at 61 FR 50632, a notice to implement section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996) (''OCRA''). Section 202 requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

As mandated by section 202, this requirement covers developments that (1) are on the same or contiguous sites, (2) contain more than 300 units, (3) have a vacancy rate of at least ten percent for units not in funded, on-schedule modernization programs, (4) cannot be revitalized through reasonable programs, and (5) are more expensive than tenant-based assistance. These developments must be removed from the public housing inventory within five years. Plans to do so must be developed in consultation with affected public housing residents and the local government containing the public housing. The term ''developments,'' as used in the statute and in this rule, includes applicable portions of developments. Tenant-based assistance or relocation to other public or assisted housing (to the maximum extent practicable, of the tenant's choice) must be offered to public housing residents whose developments will be removed from the inventory.

As required by section 202, the September 26, 1996 notice established standards to permit implementation in fiscal year 1996.[1] The standards tracked section 202(a) of OCRA and became effective September 30, 1996. On December 26, 1996, at 61 FR 68048, the Department issued a notice which amended the time frames that the Department set in the September 26, 1996 notice for accomplishing the standards necessary for compliance with section 202. On March 24, 1997, at 62 FR 13894, and on July 2, 1997, at 62 FR 35828, the Department issued notices which further amended the time frames.

Section 202 is a continuing requirement. For FY 1997, the time frames were established by **Federal Register** notices referenced above. The Department is considering, as of FY 1998, requiring one submission to be due at the time of submission of the Comprehensive Grant Plan or as a part of the Comprehensive Grant Plan. Comments are invited on this consideration, as well as other aspects of the proposed timing and consultation process.

III. Summary of Changes to the September 26, 1996 Federal Register Notice

The interim rule makes the following changes to the provisions set out in the September 26, 1996 notice:

1. Appropriate resident participation and involvement is emphasized.

2. When determining whether a property is subject to the requirements,

[1] The standards set forth in the September 26, 1996 notice are organized to coincide with the following statutory provisions:

(A) Be on the same or contiguous sites.

(B) Total more than 300 dwelling units.

(C) Have a vacancy rate of at least ten percent for dwelling units not in funded, on-schedule modernization programs.

(D) Have an estimated cost of continued operation and modernization of the developments 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).

(E) Be identified as distressed housing that the public housing agency cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income.

PHAs can now use vacancy data from either their last confirmed PHMAP certification, as reported on the Form HUD–51234 (Report on Occupancy), or more recent data which demonstrates improvement in occupancy rates.

3. The per occupied unit cost test for continuing to operate the current, partially occupied development is eliminated. Instead, the cost test used will be the cost of providing a development that is viable over the long term.

4. For definition of viability, the income mix standards are changed to emphasize a site's ability to attract and retain a reasonable mix of households with full-time workers.

5. Changes to the post-revitalization cost test include reduced accrual costs for a revitalized development to better reflect modernization costs and the amount of investment made in the property, and inclusion of certain demolition and relocation costs as a cost of Section 8 rental assistance. Though the requirement remains for most developments to amortize modernization over a 20 year period rather than over a thirty year period, PHAs may present a thirty year amortization when revitalization is equivalent to new construction. Revitalization will only be considered reasonable where its cost does not exceed the cost of Section 8 rental assistance. All sources of funds for the revitalization effort must be identified, and the funds must be on hand if the PHA proposes to revitalize the development.

6. Where the PHA will demolish all of the units in a development, or the portion thereof, that is subject to section 202, section 202 requirements will be satisfied once the demolition occurs and its standards will not be applied further to the PHA's use of the site.

IV. Discussion of Public Comments on the September 26, 1996 Federal Register Notice

The September 26, 1996 notice invited public comment, and five commenters responded. In general, the commenters expressed concern in several areas. First, the process followed to develop and publish the notice was questioned. Second, the need for tenant consultation at all stages was stressed. Third, various issues were raised regarding the cost tests, specifically whether both the pre- and post-revitalization cost tests adequately reflected true and accurate costs. Further, many comments considered the outcome of post-revitalization scenarios, including the reasonableness of the ''definition'' of long-term viability, and the availability of sufficient Section 8 rental assistance. Finally, several commenters questioned if the outcome meant fewer housing resources for those in need.

A summary of the comments, with HUD's responses, follows:

Administrative Process and Legal Requirements Comment: The September 26, 1996 notice is invalid because:

—The Administrative Procedures Act was ignored. There was not a proposed and final rulemaking (and no good cause exception) with submission to Congress and the Comptroller General. HUD has usurped the rulemaking process as described in Part 10 of 24 Code of Federal Regulations.

—The statutory authority for the program lapsed on October 1, 1996, and there has been no legal extension.

—The notice was published on September 26, 1996 with an effective date of September 30, 1996. This was not sufficient; there is a need for a proposed and a final rule.

—The legislative language indicates that the process for implementation (and not actual implementation) begin by September 30, 1996.

Response: The September 26, 1996 notice is valid for the following reasons:

—Advance notice and public comment were not required before issuance of the document because the document was a notice and not a rule. Section 202 of OCRA does not contain a provision that mandates rulemaking before implementation of this section. Furthermore, section 202 directs the Secretary to establish standards for implementation and guidelines for developing a conversion plan. The notice did not go beyond the provisions of the statute, but provided the standards and guidelines required by the statute. With respect to the latter, HUD solicited public comment from representatives of groups most affected. As stated in the published Notice, the comments were taken into consideration.

—Since the document was not a rule, it did not have to be submitted for Congressional review of final rules and did not have to comply with the 15-day pre-publication and 30-day delayed effective date requirements for rules under section 7(o) of the HUD Act.

—Section 202 mandates that the Secretary establish standards to permit implementation of this section in Fiscal Year 1996. The statute was passed on April 26, 1996, and it would have been unreasonable to expect full implementation, through proposed and final rulemaking, by September 30, 1996. HUD made every effort to publish these standards as soon as possible, after informal consultation with representative groups. Despite the tight deadline and the necessary review procedures (including review by OMB), HUD was able to publish the standards on September 26, 1996.

Tenant Consultation and Relocation

Comment: Tenant consultation is not addressed. There is a need for tenant consultation at all stages of the process, with detail provided on what is expected (in terms of tenant consultation) at each stage.

Response: The Department agrees that it is important to involve tenants at all stages of the assessment process, and the September 26, 1996 notice does discuss the statute's requirement for consultation with applicable public housing tenants of the affected developments.

On December 26, 1996, the Department published another notice (61 FR 68048), which clarifies that PHAS must provide, as an initial step, copies of their submissions for Standards A to C to the appropriate tenant councils and groups.

This interim rule further details, at § 971.9, the PHAs' requirements to consult with appropriate tenant groups when conducting a viability assessment and developing conversion plans.

Comment: The notice needs to further address tenant relocation, expand relocation requirements and reference the Uniform Relocation Act.

Response: The section entitled ''Plan for Removal of Units From Public Housing Inventories; Implementation'' in the September 26, 1996 notice includes a discussion of the relocation process, including alternatives, resources and the statutory requirement for consultation.

This interim rule cross-references to the regulatory provisions on displacement and relocation at 24 CFR 970.5 which include applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) and the implementing regulations at 49 CFR part 24.

Cost Test Issues

Comment: The formula creates inflated costs per public housing unit, while undercounting the costs of Section 8 rental assistance.

The formula unfairly favors Section 8 by comparing the cost of all public housing units to the cost of Section 8 for only tenants currently in occupancy, by

failing to capture inflation, and by overstating accrual needs.

The calculation disadvantages public housing.

The calculation fails to capture the inherent value of a public housing development.

Demolition and relocation costs should be included on the Section 8 side of the calculation.

The calculation overly penalizes a substantially vacant development.

Response: Several changes have been made to the cost test as a result of these comments and the experiences of HUD and its consultants. With the changes, the interim rule provides a better comparison between the costs of a public housing unit versus the costs of Section 8 rental assistance.

The cost test in the notice for continuing to administer the current, partially occupied development typically required layers of assumptions to estimate costs and to express these costs per occupied unit. Moreover, while that test attempted to accurately include current costs per occupied unit, no public housing authority proposes to continue to administer a development for two decades in a partially occupied state. Thus, HUD has decided to drop the initial cost test and to rely on the cost test for a revitalized, fully occupied development.

The cost test for the revitalized development will require realistic estimates for physically upgrading and then maintaining a viable development. Although current operating costs of the development will no longer be required for an independent cost test, these current costs will be used as one of the standards to show that the projected operating costs of the revitalized development are plausible. In particular, the discussion of projected costs must justify any estimate of per unit costs of the revitalized development that are significantly lower than the current operating costs per occupied unit of the development (or an estimate of those costs).

The accrual number for the post-revitalization cost test is now determined by taking the Total Development Cost (TDC), multiplying it by a coefficient of .02, and dividing by 12. Commenters thought that higher levels of modernization at the start of an accrual cycle should lower the accrual costs for many years to come. HUD agrees. To reflect these views, the accrual model for the revitalization stage (now the only stage) will first deduct from the TDC half the per unit cost of modernization, before multiplying the coefficient of .02 (a fifty year cycle) and dividing by 12 to make a monthly estimate. Thus, if the modernization cost per unit equalled the TDC, the estimated accrual per month would be halved.

An amount for demolition, site preparation and relocation will now be included as a cost of Section 8 rental assistance. Commenters said that demolition of buildings on site is a cost that should be covered by the Section 8 alternative. HUD agrees. The interim rule takes into account basic demolition costs of units that would otherwise be occupied under a viability plan and treats them as a capital cost to be amortized on the Section 8 side. The per unit costs of basic demolition and relocation will be actual costs based on comparable experience, but can be no higher than 10 percent of the TDC of a two bedroom walkup in the area. This cap is higher than the typical cost of demolition sustained by buildings demolished in the Hope VI program.

Some commenters suggested that extensive revitalization of a development will extend its useful life as low income housing to well beyond the twenty years of a viability test. Although some developments with the right mix of site, initial construction, management, tenants, and neighborhood remain viable well past twenty years, such extended viability cannot be assumed—especially for developments with the vacancy problems of those on the 202 list. The expenditure of modernization funds will not necessarily ensure viability past twenty years. Rather than generally extending the amortization period from twenty to thirty years, and rather than stiffening the viability test from twenty to thirty years, the interim rule instead will use a thirty year period only when revitalization is equivalent to new construction. Even for developments with a twenty year amortization, the cost test will recognize the value of large-scale modernization by reducing the ongoing cost of accrual (See above).

A somewhat different view of value is that public housing merits an insurance value because it will always be there to serve low income residents, whereas private rental housing might become much less available. Insurance value, however, is not easily computed and a marked decline in the supply of private rental housing for low income households will be reflected in a higher Fair Market Rent (FMR) standard.

Post-Revitalization Scenarios

Comment: The definition of long-term viability is too stringent; not all covered developments need density reduction; the income-mix requirement is unrealistic.

The criteria for long-term viability are problematic. Additional field work needs to be done to determine more adequately what is viable in the long-term (e.g., what is reasonable in terms of income mix).

The definition of long-term viability is too vague.

HUD needs to clarify what is meant by ''substantially exceeds Section 8 cost test.''

The use of the Total Development Cost guidelines is inappropriate.

Response: The basic elements required for reasonable revitalization have been retained. Viability has been defined elsewhere as the achievement of structural/system soundness and full occupancy at reasonable cost (see 24 CFR 968.315(e)(4)); and a reasonable source of funding also is an obvious requirement. Experience has shown, in addition, that achievement of physical soundness and full occupancy is not always enough to achieve viability in the long term. Section 202's inclusion of ''density reduction'' and ''achievement of a broader range of household income'', as measures to be taken in pursuit of long-term viability, indicate Congress' understanding that excessive density and concentration of very-low-income households can be serious impediments to the viability of public housing.

A fundamental aspect of this standard is the definition of long-term viability. For this purpose, HUD will continue to consider twenty years (or at least 30 years when the investment is equivalent to new construction) to be ''long term''. Twenty years is in keeping with the expected life of modernization improvements, as reflected by the length of annual contributions contracts covering modernization grant awards. [See section 14(b)(2) of the United States Housing Act of 1937 as amended, 42 U.S.C. 1437 *et seq.*]

This interim rule, nevertheless, in some respects modifies the ''definition'' of long-term viability. First, density requirements are clarified. PHAs no longer need demonstrate reduced density to assure long-term viability, but must show that the density proposed in the revitalized site is appropriate for the property and the site.

Second, income mix requirements are loosened somewhat. Some commenters thought that requiring an income mix estimated as 25 percent of households over time having an income of 30 to 50% of the area median income was too rigorous as a threshold standard for viability. HUD agrees. The interim rule will moderate the standard, so that the revitalized development must be able to attract over time a significant mix of

households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of the area median). The presence of some income mix is essential to the long-term social viability of a family development and is cited in the statute, and pegging that mix to a significant presence of full-time workers with a range of modest incomes is a minimum way to have a mix.

After consideration of the comments and in light of the statute's purpose, the interim rule states that reasonable revitalization must be able to be carried out with currently available funds and for no more than the cost of Section 8 rental assistance.

Commenters indicated that use of Total Development Cost (TDC) guidelines as a measure on which to judge reasonable reconstruction costs is inappropriate. Though HUD is reviewing possible changes in the applicability of TDC to reconstruction costs on an expedited basis, PHAs must continue to use the TDC until such changes are finalized.

Comment: The time frames for response are not realistic, especially for the development of a revitalization plan.

Response: The time frames for submission have been modified accordingly and the new time frames were published in notices in the **Federal Register** on December 26, 1996, March 24, 1997, and July 2, 1997. The July 2, 1997 notice extended the deadlines for submissions to HUD field offices as follows:

Accomplish Standards A to C by January 31, 1997 (was December 29, 1996)

Accomplish Standard D and E thirty (30) days after the effective date of the interim rule (was June 30, 1997)

Submit conversion plan ninety (90) days after accomplishing Standards D and E (was September 26, 1997)

PHAs now have more time to comply with all of the requirements of Section 202, and to develop a plan to either remove units from the public housing inventory or revitalize the development. Additional time will be provided to PHAs to modify plans or submissions if needed to comply with this interim rule.

Comment: The rule should stress the need for all plans to be consistent with the Consolidated Plan.

Response: As required by the statute, the interim rule will reiterate that any conversion plan must be approved by the local officials as not inconsistent with the Consolidated Plan.

Comment: HUD needs to indicate how a PHA can appeal if it disagrees with the HUD contractor.

Response: As stated in the September 26, 1996 notice, for sites where HUD has contracted with consultants for assessments, PHA responsibilities under this section are independent of any activities of the consultants. PHAs are responsible for submitting documentation in accordance with the requirements, but may use the consultants' assessments if they choose. Even where the PHA agrees with the consultant's findings, HUD reserves the right to make its own assessment of the evidence. In cases where a PHA disagrees with the consultant's findings and recommendations, the PHA's independent submission will serve as an initial indicator of disagreement. HUD will follow up in such situations accordingly, and may require additional documentation from the PHA or the consultant.

Potential Loss of Low Income Housing Resources

Comment: There needs to be a Section 8 rental assistance allocation to offset the loss of hard units.

There are not sufficient Section 8 resources available to meet the demand.

A commitment for replacement units is necessary before PHAs proceed.

Response: HUD has awarded several thousand section 8 rental certificates and vouchers in fiscal years 1995 and 1996 for relocation housing or replacement of developments covered by this interim rule. The fiscal year 1997 appropriation of Section 8 rental assistance that can be used for section 202 purposes appears sufficient. HUD has requested that Congress appropriate a sufficient number of Section 8 certificates and vouchers for this purpose in fiscal year 1998.

Comment: The rule does not adequately consider the needs of the current residents, or those on the waiting list.

The rule places a burden on the Section 8 rental market, which will be a problem for certain communities.

The rule fails to adequately consider the need for hard units in certain communities.

There is a need for additional project-based housing in some communities.

This ''one size fits all'' solution is not applicable to all cases.

Response: The law and the interim rule allow for implementation of a conversion plan over a period of up to five years, to provide some flexibility to adapt to local situations.

This Interim Rule

This interim rule takes into consideration the comments received on the September 26, 1996 notice and codifies the modified requirements, as discussed above, in a new part 971. This interim rule also provides for establishment of the time frames for compliance with section 202 by publication of a notice annually in the **Federal Register**.

Justification for Interim Rule

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1).

This interim rule provides further information on provisions that are already in effect, and modifies several of the requirements in accordance with public comments received on the September 26, 1996 **Federal Register** notice. It is important that these changes be applicable to those PHAs subject to section 202 in fiscal year 1997.

In the interest of obtaining the fullest participation possible in determining the proper means of administering the section 202 provisions, and in addition to the comment process that occurred with respect to the Notice, the Department invites public comment on the interim rule. The comments received within the 60-day comment period will be considered during development of a final rule that ultimately will supersede this interim rule.

Findings and Certifications

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled ''Address.''

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule do not have significant impact on States or their political subdivisions since the provisions of this interim rule apply to only a small percentage of PHAs that have developments with more than 300 units and adjusted vacancy rates of ten percent or more.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant impact on a substantial number of small entities, because the provisions of this interim rule apply to only a small percentage of PHAs that have developments with more than 300 units and adjusted vacancy rates of ten percent or more.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the programs affected by this interim rule is 14.855.

List of Subjects in 24 CFR Part 971

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended to add a new part 971 to read as follows:

PART 971—ASSESSMENT OF THE REASONABLE REVITALIZATION POTENTIAL OF CERTAIN PUBLIC HOUSING REQUIRED BY LAW

Sec.

Authority: Pub. L. 104–134; 42 U.S.C. 3535(d).

§ 971.1 Purpose.

Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104–134, approved April 26, 1996) (''OCRA'') requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

§ 971.3 Standards for identifying developments.

(a) PHAs shall use the following standards for identifying developments or portions thereof which are subject to section 202's requirement that PHAs develop and carry out plans for the removal over time from the public housing inventory. These standards track section 202(a) of OCRA. The development, or portions thereof, must:

(1) *Be on the same or contiguous sites.* (OCRA Sec. 202(a)(1)). This standard and the standard set forth in paragraph (a)(2) of this section refer to the actual number and location of units, irrespective of HUD development project numbers.

(2) *Total more than 300 dwelling units.* (OCRA Sec. 202(a)(2)).

(3) *Have a vacancy rate of at least ten percent for dwelling units not in funded, on-schedule modernization.* (OCRA Sec. 202(a)(3)). For this determination, PHAs and HUD shall use the data the PHA relied upon for its last Public Housing Management Assessment Program (PHMAP) certification, as reported on the Form HUD–51234 (Report on Occupancy), or more recent data which demonstrates improvement in occupancy rates. Units in the following categories shall 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 stated in the law;

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

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

(4) *Have an estimated cost of continued operation and modernization of the developments 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).* (OCRA Sec. 202(a)(5)).

(i) For purposes of this determination, the costs used for public housing shall be those necessary to produce a revitalized development as described in the paragraph (a)(5) 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) Both the method to be used and an example are included in the Appendix to this part.

(5) *Be identified as distressed housing that 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.* (OCRA Sec. 202(a)(4)). [See § 971.5.]

(b) Properties meeting the standards set forth in paragraphs (a)(1) through (3) of this section will be assumed to be ''distressed'' unless the PHA can show that the property fails the standard set forth in paragraph (a)(3) of this section for reasons that are temporary in duration and are unlikely to recur.

(c) Where the PHA will demolish all of the units in a development, or the portion thereof, that is subject to section 202, section 202 requirements will be satisfied once the demolition occurs and its standards will not be applied further to the use of the site.

(d) PHAs will meet the test for assuring long-term viability of identified housing only if it is probable that, after reasonable investment, for at least twenty 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 standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments which clearly should disqualify the site from continuation as public housing.

§ 971.5 Long-term viability.

(a) *Reasonable investment.* (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 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 comprehensive plan for modernization is to be used for this purpose, unless a PHA demonstrates or HUD determines that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

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

(3) The source of funding for such a revitalization program must be identified and already available. In addition to other resources already available to the PHA, a PHA may assume that future formula funds provided through the Comprehensive Grant Program are available for this purpose, provided that they are sufficient to permit completion of the revitalization within the statutory five year time frame. (Comprehensive plans must be amended accordingly.)

(b) *Density.* Density reduction measures would have to result in a public housing community with a density approaching that which prevails in the community for similar types of housing (typically family), or a lower density. If the development's density already meets this description, further reduction in density is not a requirement.

(c) *Income mix.* (1) Measures generally will be required to broaden the range of resident incomes to include over time a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of median area income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

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

§ 971.7 Plan for removal of units from public housing inventories.

(a) *Time frames.* Section 202 is a continuing requirement, and the Secretary will establish time frames for submission of necessary information annually through publication of a **Federal Register** notice.

(b) *Plan for removal.* With respect to any development that meets all of the standards listed, the PHA shall develop a plan for removal of the affected public housing units from the inventory. The plan should consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and shall provide for relocation from the units as soon as possible. For planning purposes, PHAs shall assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan shall include:

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

(2) The number of households to be relocated, by bedroom size;

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

(4) The relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) A schedule for relocation and removal of units from the public housing inventory;

(6) Provision for notifying families residing in the development, in a timely fashion, that the development shall be removed from the public housing inventory; informing such families that they will receive tenant-based or project-based assistance; providing any necessary counselling with respect to the relocation, including a request for any necessary counseling funds; and assuring that such families are relocated as necessary to other decent, safe, sanitary and affordable housing which is, to the maximum extent possible, housing of their choice;

(7) The displacement and relocation provisions set forth in 24 CFR 970.5.

(8) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 971.9.

(c) Section 18 of the United States Housing Act of 1937 shall not apply to demolition of developments removed from PHA inventories under this section, but shall apply to any proposed dispositions of such developments or their sites. HUD's review of any such disposition application will take into account that the development has been required to be removed from the PHA's inventory.

(d) For purposes of determining operating subsidy eligibility under the Performance Funding System (PFS), 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). The PHA will receive written notification that the plan has been approved (or accepted). Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this chapter and also will be provided the phase-down of subsidy pursuant to § 990.114 of this chapter.

(Approved by the Office of Management and Budget under control number 2577–0210).

§ 971.9 Tenant and local government consultation.

(a) PHAs are required to proceed in consultation with affected public housing residents. PHAs must provide copies of their submissions complying with §§ 971.3(a) (1) through (3) to the appropriate tenant councils and resident groups before or immediately after these submissions are provided to HUD.

(b) PHAs must:

(1) Hold a meeting with the residents of the affected sites and explain the requirements of section 202 of OCRA;

(2) Provide an outline of the submission(s) complying with § 971.3(a) (4) and (5) to affected residents; and

(3) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(c) PHAs must prepare conversion plans in consultation with affected tenants and must:

(1) Hold a meeting with affected residents and provide draft copies of the plan; and

(2) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(d) The conversion plan must be approved by the local officials as not inconsistent with the Consolidated Plan.

§ 971.11 HOPE VI developments.

Developments with HOPE VI implementation grants that have

approved HOPE VI revitalization plans will be treated as having shown the ability to achieve long-term viability with reasonable revitalization plans. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans will be taken with consideration of the standards for section 202. Developments with HOPE VI planning or implementation grants, but without approved HOPE VI revitalization plans, are fully subject to section 202 standards and requirements.

§ 971.13 HUD enforcement authority.

Section 202 provides HUD authority to ensure that certain distressed developments are properly identified and removed from PHA inventories. Specifically, HUD may:

(a) Direct a PHA to cease additional spending in connection with a development which meets or is likely to meet the statutory criteria, except as necessary to ensure decent, safe and sanitary housing until an appropriate course of action is approved;

(b) Identify developments which fall within the statutory criteria where a PHA has failed to do so properly;

(c) Take appropriate actions to ensure the removal of developments from the inventory where the PHA has failed to adequately develop or implement a plan to do so; and

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

Appendix to Part 971: Methodology of Comparing Cost of Public Housing With Cost of Tenant-Based Assistance

I. Public Housing

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 the 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.

II. 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 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 from 10/1/95 through 9/30/96 is based on column C of the January 24, 1995 **Federal Register**, at 60 FR 4764, and the administrative fee for units funded from 10/1/96 through 9/30/97 is based on column B of the March 12, 1997 **Federal Register**, at 62 FR 11526); 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). This Section 8 cost would then be compared to the cost of revitalized public housing development—in the example of this section, the revitalized public housing cost of $868 monthly per occupied unit would exceed the Section 8 cost of $774 monthly per occupied unit by 12 percent. The PHA would have to prepare a conversion plan for the property.

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

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

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 column B of the March 12, 1997 **Federal Register** Notice, at 62 FR 11526, 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:

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. 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.

F. Result: In this example, because revitalized public housing costs exceed current Section 8 costs, a conversion plan for the property would be required.

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Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

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