HOUSING JUSTICE NETWORK

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Regulations Division
Office of General Counsel
451 7th Street SW., Room 10276
Department of Housing and Urban Development
Washington DC 20410-0500

Submitted electronically through www.regulations.gov

Re: Docket No. FR-5399-P-01, "Public Housing Program: Demolition or Disposition of Public Housing Projects, and Conversion of Public Housing to Tenant-Based Assistance"

Dear Regulations Division, Office of General Counsel, HUD:

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the Housing Justice Network (HJN) regarding the proposed rule published on October 16, 2014, "Public Housing Program: Demolition or Disposition of Public Housing Projects, and Conversion of Public Housing to Tenant-Based Assistance."[1] NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income tenants and homeowners; and increasing housing opportunities for racial and ethnic minorities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. In addition, NHLP hosts the national Housing Justice Network, a vast field network of over 500 community-level housing advocates and tenant leaders. Housing Justice Network member organizations are committed to protecting affordable housing and housing rights for low-income families and individuals nationwide. The following comments draw on NHLP and HJN's extensive experience working with advocates, residents, and PHAs for decades on the demolition and disposition of public housing.

NHLP and HJN applaud HUD for making important substantive revisions to the existing demolition and disposition regulations. However, the proposed rule can be improved in several ways to better meet the needs of PHAs, residents, and their surrounding communities. In the opening section of our comments, "General Concerns," we present our primary concerns and suggestions pertaining to seven topics. Later, in the "Specific Concerns" section, we offer specific comments on the rule, section-by-section.

[1] Public Housing Program: Demolition or Disposition of Public Housing Projects, and Conversion of Public Housing to Tenant-Based Assistance, 79 Fed. Reg. 62,250 (October 16, 2014).

General Concerns

1. Resident Consultation and Participation Requirements

Meaningful tenant involvement is fundamental to all public housing decisions. In many demolition and disposition actions under the current regulations, resident participation was merely a formality and secondary to the PHA's actions. The proposed rule adds more robust resident consultation requirements including what must be contained in a PHA's application for demolition and disposition as well as a mandate that consultation be accessible to all program participants. The proposed rule, however, does not go far enough to create a meaningful tenant participation process because (1) the PHA-driven process is not transparent, (2) a PHA is only required to consult with residents at the final stage of the application process and (3) the timelines for resident involvement are vague.

Under the current process, a PHA applying for demolition or disposition often schedules and convenes resident consultations without coordinating with the Resident Council. As a result, the PHA sets the agenda; residents have little chance to prepare, review the proposal, obtain independent legal or technical assistance and other community support, be briefed on their options, understand their rights, or know what they can and cannot negotiate. Often, the PHA's website provides no information regarding where and when resident consultations are taking place. Moreover, resident consultation requirements have been fulfilled in the past by merely informing tenants, via written notice, of the proposed action and a statement that alternative housing will be provided on a later, unspecified date. Residents are therefore not on notice that they even have the option to participate in the application process. In short, the PHA, its lawyers, and possibly developer-stakeholders have an upper-hand from the start, so that even strong resident leaders can be caught off-guard.

The PHA Annual Plan process, while important, is insufficient to engage residents about a PHA's proposed actions. With respect to a proposed demolition and/or disposition, HUD only requires that a PHA include in its Annual Plan the name and location of the property, the planned activities, and the timelines for carrying out these activities.[2] For large PHAs, the required PHA Plan public hearing also covers a number of non-Section 18 topics, leaving little time for genuine public input regarding a proposed demolition or disposition.

Given the above, HUD should include in the proposed rule requirements for more transparency as a PHA develops its application for demolition and/or disposition. We suggest numerous revisions in the "Specific Concerns" section below that will make the resident consultation process more transparent and accessible such as posting draft copies of the application and public participation notices in multiple locations (including on the PHA's website). In its communication with residents, HUD should also prohibit PHAs from representing that the demolition and/or disposition is a completed process, prior to HUD approval of an application. When notifying residents of its actions, either in writing or at public meetings, PHAs should be required to state that the PHA *started* the application process, and that tenants have the right to participate and submit facts and data contesting information in the application.

[2] U.S. Department of Housing and Urban Development Public Housing Agency (PHA) Plan Desk Guide (September 20, 2001) at 40.

Another problem with the resident consultation requirements in the current and proposed rule is that HUD only requires resident consultation at the final application stage.[3] By the time it is ready for submission, a PHA has already invested considerable resources into the application process. Consultation with residents and others at this stage is likely to be perfunctory with little likelihood of meaningful revisions in response to resident input.

One way to ensure meaningful resident participation during the early planning stage is to require PHAs to establish a demolition/disposition advisory committee composed of representatives of residents of the proposed affected property, representatives of the resident council (if there is one), representatives of the Resident Advisory Board (RAB), and any legal aid or technical assistance providers chosen by the residents, resident council, or RAB. Consultation with the advisory committee should take place throughout the planning stage until a draft application is ready for presentation to those identified in Section 970.9(a)(1). The advisory committee would communicate with, share draft application materials with, and take into consideration comments from all parties identified in Section 970.9(a)(1) throughout the planning process.

HUD seems to contemplate that PHAs will consult with residents early in the application process. For example, Section 970.9(a)(2)(i) acknowledges that some PHAs might consult "early on in the application planning process." In addition, Section 970.25(a)(3) includes as allowable actions prior to HUD approval, "planning activities, analysis, or consultations…Planning activities may include project viability studies, capital planning, relocation and replacement housing planning, and comprehensive occupancy planning." We suggest that HUD *require* early consultation with residents.

The demolition and disposition application process should be as transparent as possible so that residents will know where to easily access information about the PHA's proposed actions and how to participate in the PHA's development of its application. HUD should also require consultation with all of the residents, resident groups, and other stakeholders early in and throughout the process. In the "Specific Concerns" section below, we provide numerous additional comments that will make the resident consultation process more meaningful including a suggested timeline for the resident consultation requirements.

2. Resident Relocation

NHLP and HJN strongly support the improved resident relocation provisions set forth in the proposed rule, especially the requirements to include housing mobility counseling to residents and to show each family at least one comparable unit in a non-minority concentrated area.[4] More vigorous resident relocation requirements will help further a PHA's goals to de-concentrate poverty and affirmatively further fair housing. These goals must be balanced with strategies to preserve affordable housing in neighborhoods that are economically depressed, however, particularly when residents wish to reinvest in their existing communities. Many families will seek replacement housing on-site, even if the project is in an area with a high concentration of poverty. We therefore promote housing choice among residents displaced as a result of the demolition or disposition of public housing. Along with the detailed comments in the "Specific Concerns" Section, the proposed rule can be further improved in the following ways.

First, the proposed rule spreads requirements pertaining to relocation among three subsections:

[3] Proposed Rule, *supra*, note 1, at 62,277 (Proposed 24 C.F.R. Part 970, subpart A § 970.9(a)(2)).
[4] Proposed Rule, *supra*, note 1, at 62,275-62,276 (Proposed 24 C.F.R. Part 970, subpart A § 970.7(c)(7)(v)).

- Section 970.5 defines "comparable housing,"
- Section 970.7(c)(7), as one of the many components that must be in a complete application package, requires a relocation plan and spells out eight required elements of a relocation plan, and
- Section 970.21, which is solely about relocation, goes into detail about the content and timing of notification to tenants, and discusses obligations to provide comparable housing.

This structure creates confusion and potentially undermines the key application requirements of Section 970.7, which are not incorporated by reference into the relocation section, Section 970.21. As a result, some of the more detailed language of Section 970.21 regarding housing counseling and non-discrimination could be inadvertently left out of an application. We therefore suggest that all of the relocation provisions be consolidated and included in Section 970.21.

Section 970.7(c)(7) should be streamlined to read:

> "A certification that the PHA will comply with the relocation provisions and the written relocation plan requirements at Section 970.21 if any residents will be displaced by the proposed demolition and/or disposition."

Please note that we included numerous substantive revisions to Section 970.7 in the "Specific Comments" section below, which should also be incorporated into Section 970.21 of the final rule.

The resident relocation section also fails to include grievance rights for residents if they believe that the PHA's offer was not comparable or its relocation assistance was inadequate. Section 970.21(e) should include these grievance rights, which could be raised both in grievance proceedings (if timely requested) with the PHA and/or in court. Residents should be informed of grievance rights and timelines.

We also suggest that HUD revise the relocation language throughout the proposed rule to allow for relocation outside of a PHA's area of jurisdiction when desirable comparable housing lies outside of the PHA's jurisdiction. The term "throughout the housing region" should be added where appropriate to avoid arbitrarily limiting relocation to the geographical region in which a PHA operates.

We support the rule's expanded definition of comparable housing that includes civil rights considerations (although we have detailed comments to improve the definition in the "Specific Concerns" section below). The rule, however, should include protections so that displaced families receive the comparable housing of their choice. For example, under Section 970.21(c)(1), if a household had to relocate to other public housing or project-based Section 8 and the family ultimately wanted a Housing Choice Voucher, the family should remain eligible for such assistance. Similarly, if a household either originally wished to remain in public housing or project-based Section 8 (because of additional rent and security of tenure provisions, special unit features, or proximity to desired services, for example), but had to use Section 8 tenant-based assistance because it was the resource immediately available, or, a resident elected to receive a voucher but discovered that it was too unstable (given gentrification pressures or changes in the household composition), the household should remain eligible to transfer to public housing or project-based assistance as units become available. Moreover, when comparable

housing is offered outside of the PHA's jurisdiction, as we suggest above, families should always have the choice whether or not to leave the jurisdiction. Allowing families to choose will avoid negative consequences such as the loss of employment or removing children from a desirable school district.

Last, HUD should prohibit PHAs from rushing the relocation process after an application for demolition has been approved (unless there are immediate health and safety issues) because it limits a family's ability to choose comparable housing. In the past, PHAs have tried to swiftly move residents out of the project in order to begin the demolition, directly after HUD's approval of its application. Families should be allowed sufficient time for mobility counseling and given a reasonable time to move, particularly when the comparable housing is in the form of a voucher.

3. Civil Rights Requirements

We strongly support the robust civil rights certification requirements in the rule, including the prospective consideration of how the proposal will affirmatively further fair housing and further the PHAs obligations to de-concentrate poverty,[5] the provision of review and disapproval by HUD of proposals that do not affirmatively further fair housing,[6] and the prospective racial impact assessment that may be requested by HUD.[7] These requirements will help guarantee HUD's goals as stated in its preamble: that demolition and disposition actions "do not serve to maintain or increase segregation based on race, ethnicity, or disability."[8]

At the same time, we urge HUD to consider resident choice as a critical part of a PHA's fair housing requirements. A PHA's civil rights and de-concentration goals should not preclude activities that revitalize impoverished areas and allow residents to remain in existing neighborhoods. As discussed above, to some families, an offer of comparable housing may mean the right to return or remain living on the current site, despite it being an area highly concentrated in racial and/or ethnic poverty. HUD should not consider this as an action that maintains or increases segregation.

4. Unit Replacements

The proposed rule does not take sufficient steps to slow the loss of the nation's affordable housing stock. In implementing revised regulations on the demolition and disposition of public housing, HUD should focus on maintaining the maximum number of units, affordability level of the units (both that the units are targeted to very-low and extremely-low income families and in terms of how rents are calculated), and the tenant protections available to residents. The proposed rule does little to achieve these goals and HUD can address the rule's deficiencies in several ways including clarifying HUD's grounds for approval of demolition and disposition applications and increasing requirements on PHAs to fully utilize units. Many of our comments in the "Specific Concerns" section suggest additional revisions to the proposed rule that address the preservation of affordable housing.

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[5] Proposed Rule, *supra*, note 1, at 62,273 (Proposed 24 C.F.R. Part 970, subpart A § 970.5) (definition of comparable housing), *Id.* at 62,275-62,277 (Proposed 24 C.F.R. Part 970, subpart A § 970.7 (civil rights-related application requirements).

[6] Proposed Rule, *supra*, note 1, at 62,280 (Proposed 24 C.F.R. Part 970, subpart A § 970.12).

[7] Proposed Rule, *supra*, note 1, at 62,276-62,277 (Proposed 24 C.F.R. Part 970, subpart A § 970.7(c)(19)(ii)).

[8] Proposed Rule, *supra*, note 1, at 62,252.

First, under Section 970.15(a)(1), the standard for HUD to approve a demolition application due to the property's obsolescence are so vague and subjective that they provide little meaningful guidance as to when an application should be accepted or rejected, or for judicial review in the case HUD action is challenged. Merely listing "serious outstanding capital needs" identifies the majority of older public housing sites in the country, and does not involve an evaluation of other alternatives. The same is true with the phrase "design or site problems." Factors that affect marketability, usefulness, or management can often be interpreted in a variety of ways. What would be far more helpful is an evaluation of the steps that the PHA has taken to address concerns at the site, an explanation why those steps have not worked and a discussion of why the PHA has rejected other alternatives. HUD can then evaluate whether there may be other steps the PHA should be taking that could result in preservation.

Similarly, in Section 970.17(a), as with obsolescence, the regulation provides little in the way of objective criteria for a reviewer (or a court) to evaluate if the request for disposition should be granted. Use of density alone is not proper—in fact, in a number of urban areas, new dense development near transportation is encouraged, and placement of certain commercial or business facilities near the site would avoid isolation and may foster integration with neighborhood services and employment.

In considering applications for disposition, HUD's thumb should clearly be on the scale of maximum preservation and loss of as few affordable units as possible. We therefore oppose the 75% threshold in Section 970.17(b)(1-2) and suggest it should be higher. We specifically discourage HUD from going lower, as is suggested in its solicitation of comments. In fact, 100% replacement should be the expectation, and we encourage HUD to require that PHAs justify why this expectation cannot be met. In reviewing a disposition application, HUD should not only consider the number of replacement units, but whether the resident protections (in terms of rents, income targeting, and security of tenure, as well as bedroom sizes and unit features) are similar to those at the public housing site.

Last, we applaud HUD for removing the existing text that prohibits PHAs from renting units at turnover. However, the proposed rule fails to *require* that PHAs lease-up units while HUD is considering an application for demolition or disposition. Section 970.25(b) should be amended to read, "a PHA *shall* lease public housing units at turnover…" We suggest also deleting proposed Section 970.25(b)(2) because as long as the units are safe for re-rental, there should be no additional consideration by the PHA regarding leasing units at turnover. Further, when considering the number of replacement units required in an application for demolition or disposition, HUD should require a look-back period for vacancies to guard against constructive demolition and failure to fully utilize housing assistance. We commend the proposed rule's inclusion of Section 970.25(a)(2), which clearly states that a PHA may not intentionally delay or withhold maintenance in anticipation of submitting an application for demolition. We suggest adding a provision that *requires* PHAs to repair the units at turnover to keep them decent, safe, and sanitary, consistent with the Annual Contributions Contract (ACC).

5. Section 3

We applaud HUD for including Section 3 requirements in the proposed rule. However, we strongly suggest deleting the last sentence of Section 970.14. This part of the proposed rule would allow a PHA to include Section 3 activities, when they are not required, as part of the commensurate public benefit for below fair market value dispositions. HUD's intention in adding this provision is unclear. Even if HUD seeks to provide an incentive for PHAs to

participate in Section 3 activities, this provision might have unintended negative consequences. Employment and training opportunities should not be presented to PHAs or residents as a trade-off for long-term affordable housing units.

6. Demolitions Due to Emergency, Disaster, or Accidental Loss

We support the addition of Section 970.33 and particularly the codification of HUD's practice to allow demolitions in the case of emergency or major disaster without HUD approval. We offer the following suggestions to improve the proposed rule.

First, it is imperative to narrow the language in Section 970.33(a) so that the regulation allows for demolitions without HUD approval only in limited circumstances (when the demolition is needed to maintain the project in a safe condition). First, the term "unattractive nuisance" should be removed from Section 970.33(a). A PHA should not be allowed to demolish a property without HUD approval if, as a result of an emergency or major disaster, the property becomes merely an eye sore to the surrounding community. In addition, a determination that the demolition is needed to "maintain the project in a safe manner" and that safety concerns warrant immediate action, should be made by an independent, qualified professional. A third-party opinion may avoid the unintended outcome that a politically unpopular public housing project is razed when it merely requires rehabilitation. Last, HUD should remove or clarify what types of events "outside of the control of the PHA" will qualify a PHA to demolish a property without HUD approval. Non-emergency events could cause "abrupt damage" and it is unclear what HUD is referring to in this provision.

We also urge HUD to consider not only the number of units but the types of units a PHA plans to build when exempting a PHA from the demolition application process. The proposed standard is whether the PHA plans to rebuild the same number of dwelling units or non-dwelling structures as the original project. A PHA should only be exempt from the application process if it plans to rebuild the same number *of the same bedroom-sized units with at least the same accessibility features* as the original project. This will help ensure that the new building will serve approximately the same population. Otherwise, the PHA should be required to submit an application for demolition.

Section 970.33(b) and (c) should impose a time frame for the rebuilding of units. Under Section 970.33(b), when the PHA plans to rebuild the same number of units, it presumably continues to receive Operating Funds and Capital Funds for the original number of units. Given that the requirement to submit an application to HUD within one year does not apply, the PHA should be required to state how soon the units will be rebuilt. If the time period is reasonable, HUD should continue to fund the PHA at existing levels. HUD should define a reasonable time period as within two years. Moreover, Section 970.33(c) allows HUD to authorize a PHA to demolish "a lesser number of units." Here again, HUD should require that the PHA provide a time frame for restoration of the units. Finally, there should be a role for public and resident consultation on any proposal to not rebuild, or to only partially rebuild, as well as on the time frame for rebuilding. Residents and the public should be informed early about the PHA's plans. Our comments on improving the resident consultation requirements throughout the application process also apply here.

7. New Subpart B

New Subpart B will allow a PHA to retain title of its property without the use restrictions under the ACC and Declaration of Trust (DOT). This type of action falls under 24 C.F.R. Part 85.31 but would be subject to the requirements of Subpart B. Given Subpart B's broad implications for the conversion of public housing, the final rule must sufficiently address preservation issues including replacement units, affordability levels, and tenant protections, as well as enhanced civil rights and relocation obligations. Because the proposed rule's application standard is vague and fails to provide PHAs with explicit guidance, it does nothing to require, let alone encourage, PHAs to consider preservation issues in pursuing actions under Subpart B. We therefore suggest the following revisions to proposed Subpart B.

First, HUD should provide greater clarity on the grounds for approval of a conversion subject to Subpart B. Under Section 970.45(a)(2), HUD will approve a request for approval when the PHA can demonstrate that "the project is no longer needed for the operation of public housing" and there is good cause for the action.[9] Neither provision is defined in the proposed regulation and it is unclear what factors HUD will consider in making this determination. A PHA should have to show that there is no waitlist for the public housing and no eligible families wanting to live on the property in order to meet the standard that the housing is "no longer needed." In addition, at a minimum, the specific criteria for approval should be amended to provide that good cause will not be found unless the PHA has complied with Subpart A, Section 970.19, "Requirements for Disposition of a Project," where applicable.

In its preamble, HUD states that its approval "*may* require the PHA to enter into certain use restrictions or *may* impose other requirements to ensure that the property is used for HUD approved purposes for a certain length of time."[10] This discretionary language provides no guidance to PHAs, residents, or the public on the standards for approval under Subpart B. HUD also states in its preamble that to approve an application, it will require compliance with the regular disposition regulation under Section 970.17 in Subpart A. However, proposed Section 970.17, as written, fails to include this requirement.

Moreover, the affordability restrictions should not be limited to 30 years as proposed in Subpart B because the PHA is retaining the property. Longer affordability restrictions – e.g. 55 years or even in perpetuity—will help reduce the possibility that subsequent dispositions could potentially occur outside of the requirements of Subpart A. The proposed rule should also include disposition requirements at the expiration of use restrictions. Subpart A, Section 970.19 requires that property disposed of with affordability covenants for fewer than 30 years be returned to the public housing inventory at the end of that period. Property retained pursuant to Subpart B should be returned to the public housing inventory or at least be subject to compliance with Subpart A's disposition requirements regardless of the length of any affordability restrictions.

The application requirements in Section 970.45(c) should mirror those in Subpart A with respect to civil rights and relocation requirements. It is unclear why Section 970.45(c)(8) in Subpart B includes similar, but significantly less robust requirements than its parallel provisions in Subpart A (Section 970.7(c)(7)). For example, compare the "comparable housing resources" requirements of Section 970.7(c)(7)(ii) with the "housing resources" of Section 970.45(c)(8)(ii). In addition, the Uniform Relocation Act (URA) applies to Subpart B, although it includes no detailed description of relocation requirements in comparison to those described in Subpart A,

[9] Proposed Rule, *supra*, note 1, at 62,286 (Proposed 24 C.F.R. Part 970, subpart A § 970.45(a)).
[10] Proposed Rule, *supra*, note 1, at 62,266.

Section 970.21, including the right of return (Section 970.21(d)). A description and data regarding race, color, religion, sex, national origin, familial status and disability status of residents is also required in Subpart A, Section 970.7(c)(20), but not included in Subpart B. We therefore suggest requiring that PHAs comply with the obligations set forth in proposed Sections 970.7 and 970.21 regarding civil rights and relocation requirements.

Last, we suggest as additional grounds for approval under this part that HUD require PHAs to enter into use restrictions that provide for at least the same level of affordability and tenant protections (in terms of rents, income targeting, and security of tenure, as well as bedroom sizes and unit features) of the original property. This is especially important given that we do not know the subsidies that will apply once the property is converted and therefore have no assurances that the new property will meet the housing needs of the existing community. Ideally, the new subsidies should be required to carry with them the same key tenant protections and other important elements of public housing.

Specific Concerns (Organized by Proposed Sections)

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

The title should be changed because proposed Subpart B refers to the retention of public housing property, not demolition or disposition. A more appropriate title would be "Public Housing Program- Demolition, Disposition, or Retention of Title of Public Housing Projects."

Subpart A: Demolitions and Dispositions under Section 18 of the U.S. Housing Act of 1937

970.1 Purpose

The section should have clear statutory cites to both Title I (i.e., relevant portions of 42 U.S.C. § 1437) and Section 18 (i.e., 42 U.S.C. § 1437p).

970.3 Applicability

970.3(a) It is not clear if this would govern if some, but not all, of the units in a complex were covered by an ACC- for example, in a HOPE VI or mixed finance redevelopment, where there was a mix of units with ACC and PBV funding. While that might be the intent of the revised definition of "project," there is no harm in spelling it out here (at least as to the ACC-funded units). HUD should also address the question of how "floating" ACC units are handled (where there is a set aside of a certain number of ACC units, but the addresses may change).

970.3(b)(5) references agreements with third parties, and gives examples of certain leases or licenses, such as for a solar roof top, telecommunications, garden, or park space), so long as it benefits the PHA and its residents, is consistent with the PHA's Plan (as determined by HUD), is consistent with the PHA's ACC with HUD, and is approved in writing by HUD. HUD does not require a process for seeking its approval and verifying these elements, including any resident participation element. At the very least, there should be reasonable notice and an opportunity for comment by residents affected by this arrangement, and it should be part of the PHA Plan or public hearing, and the PHA should share that information with HUD. HUD should also be provided with a copy of the lease or license and it should be publicly available for review.

970.3(b)(6) refers to the adaptation or utilization of portions of projects (including available common areas and unoccupied dwelling units) for authorized non-dwelling purposes related to public housing, including resident amenities, activities and services, and public housing administration. There is nothing describing the process that is used for such adaptation or utilization and consequently there is no apparent requirement for HUD and resident review to be sure that this doesn't undercut the provision of housing[11] or the PHA's mission. It is one thing, for example, to take an apartment off line so that there is an office for use by a resident council. It is another thing to remove 20 apartments for a social services program that may or may not benefit residents of the development. Any actions like this, while not triggering the full demolition or disposition regulation, should have a process for resident and public review and comment and for HUD approval, with sufficient description of what the PHA is doing so that there can be a meaningful evaluation.

970.3(b)(7) provides for the leasing of a project (but not individual dwelling units) for the purposes of enabling a prospective owner-entity to show site control in an application for funding for the development of the project, such as through Low-Income Housing Tax Credits (LIHTC), so long as the lease is for one year or less and is approved by HUD in writing. While we do not object to this proposal, public and resident notice should be required, as this normally would be part of the early stages of an ultimate mixed finance or similar redevelopment proposal (such as through RAD). It is critical to quell the rumor mills as early as possible when private developers are working in public housing by providing accurate and clear information to residents and the public. Inclusion in the PHA Plan/public hearing process would help achieve this goal.

970.3(b)(8) discusses reconfiguration of the interior space of buildings, such as moving or removing interior walls to change the design, sizes, or numbers of units for the normal operation of public housing, without "demolition". This would presumably include creation of breakthrough units for larger household sizes, or adding accessibility features—either of which may reduce the overall "unit" count but which could well be appropriate given local housing needs. However, included here is also the change in the status of a unit from dwelling to non-dwelling purposes. It is not clear to what extent this last category is similar to (6) above, and there is a similar concern that significant reprogramming of dwelling units to other purposes should trigger a public and resident review process and require HUD approval. Here and in (6), it may be helpful to lay out "de minimis" provisions where there would be public notice of changes, and others above the de minimis level where affirmative HUD approval would be required and a more full-blown public process.

970.3(b)(10) discusses takings by a public or quasi-public entity. While this is likely not under the PHA's control, there should be requirements for timely notice by the PHA to HUD, residents, and the public when the PHA is aware this is occurring, and its impact. There should also be safeguards so that PHAs do not collude in the use of eminent domain power by other entities as an end-run around normal HUD requirements (such as a civil rights review).

970.3(b)(11) refers to real property (vacant land and improvements, but not dwelling units) which is owned or acquired by or donated to a PHA with public housing or other funds and then

[11] Under 42 U.S.C. § 1439(a)(1), HUD has a duty to assure that funds made available for assistance under the United States Housing Act of 1937 shall be utilized to the maximum extent practicable to meet the needs and goals identified in the unit of local government's housing assistance plan. This means that HUD has an affirmative duty to scrutinize any proposals that may affect full utilization of previously allocated housing assistance.

transferred to an owner entity prior to date of financing approval to enable the owner-entity to develop the property using the mixed finance development method at 24 C.F.R. § 905.604. It is not clear how this differs from (12) below, and it would be helpful to outline that—see comments on (12). In addition, although this may not trigger the regular 24 C.F.R. Part 970, Subpart A process, it should involve communications with the public and residents to again ensure transparency in the housing planning process and to quell rumors.

970.3(b)(12) refers to disposition of vacant land (but not units) comprising a project for development pursuant to mixed finance development under 24 C.F.R. § 905.604. HUD explains that these dispositions are exempt from this regulation but not Section 18 of the 1937 Act, and that there will be a PHA application and HUD approval. There are a few questions here: (a) what is the process, including resident and public involvement, what has to be shown, and where will this be articulated—in a PIH Notice? (b) how do (11) and (12) differ from each other. There should still be a robust process for resident and public participation even if all of the details in Part A need not be provided, and the PHA should provide enough detail so that its proposal can be evaluated against the goals of meeting long-term affordable housing needs in the community.

970.3(b)(13-16). Subsection 13 discusses demolition under the de minimis exception in Section 970.27; (14) discusses demolition of severely distressed units as part of a revitalization plan under HOPE VI or Choice Neighborhoods approved after October 21, 1998; (15) discusses demolition under an approved mandatory conversion under Section 33 of the 1937 Act; and (16) discusses demolition of projects due to a disaster, sudden accident or casualty loss (together with certain information required by Section 970.33). Presumably any Section 33 action would require the full blown process discussed at 42 U.S.C. § 1437z-5 and 24 C.F.R. Part 972. For all of these subsections, there should be public and resident notice about how many units are involved, at what locations and of what sizes, the timing of the proposed action, and information to ensure that relocation needs have been addressed for any residents required to move from those units. Additionally, any substantial changes to the plans should be discussed and notice should be provided to the residents.

970.2(b)(18) describes consolidations of occupancy within or among buildings of a project, or among projects, or with other low-income housing[12] for the purposes of improving living conditions of, or providing more efficient services to residents. While this requires PHA notice to HUD in advance, there is no requirement for resident or public consultation, and there should be, at least through the PHA Plan process. Moreover, this should not be seen as a basis to excuse the PHA from conducting normal maintenance operations and filling of vacancies (i.e., constructive demolition or disposition), and the PHA should be required to articulate its plan with milestone dates for returning to full utilization of its federal public housing units.

970.5 Definitions

- "*Commensurate public benefit*"—while this lists things that would "count" for commensurate public benefit, it does not indicate how HUD evaluates if what is being provided has sufficient commensurate public benefit as against obtaining fair market

[12] It is not clear what HUD means here by "other low income housing". This may be intended to cover situations where the PHA administers both federal and state or locally-funded public housing, and would permit the PHA to transfer tenants from its federal portfolio to its state or locally funded portfolio pending rehabilitation and re-occupancy. This may, however, result in a change in rent and other tenant protections, and if the change is permanent in nature, may trigger URA or state/local relocation obligations; alternatively, if the placement is considered to be temporary, there may be other HUD provisions on relocation assistance that would apply.

value. For the rental units, there is no indication that the rent levels are Brooke Amendment equivalent (i.e. are set at 30% of adjusted income), that the proportion of units targeted to ELI, VLI, and LI households will remain the same, or how the use restrictions will work. In addition, see our comment in the "General Concerns" section on Section 3 activities as a qualifying benefit for purposes of a disposition for less than FMV. HUD should not include Section 3 activities as part of the "commensurate public benefit" for below FMV dispositions.

- "*Comparable housing*"— Affordability must be part of the definition of comparability—i.e., both that it is targeted to be affordable to low-income families at ELI and other targeted ranges, and that the rent is similar to Brooke Amendment (generally 30% of adjusted income, and can be changed to match changes in household income). The reference to affordability here is for displaced residents, and doesn't also address how comparability is evaluated for commensurate public benefit or replacement housing for future residents who normally would be placed in the inventory. It is also not clear how HUD and the PHA will determine comparable rents and what role residents and public may have in reviewing and commenting on this. Also see our comments on relocation in the "General Concerns" section above.

- "*Displaced resident*" —here or elsewhere, it should be recognized that it would be permissible to have a "split" household policy, where a PHA, in lieu of simply finding a unit which is large enough to house the original household, may offer separate assistance to components of the household sufficient to cover all household members' needs.

- "*Disposition*"—This should include a reference to the terms "instrumentality" and "affiliate," so that distinctions between Subpart A and Subpart B can be made.

- "*Lease compliant displaced resident*" should be defined further. As noted above, there should be some potential here for "splits," in which arrangements could be made for assistance to household members that need not necessarily all remain together. Moreover, if a household is under an agreement as part of an eviction (either a court agreement or some type of informal settlement) and is in compliance, the household should continue to be regarded as lease compliant (in some cases, the PHA may want to see if the agreement can carry over to the new address if there are ongoing concerns about payment or conduct). A family should not be regarded as non-lease compliant, for the purpose of relocation eligibility, if for example it was located into housing that could be lost due to protections which are less than those in public housing. For example, a Section 8 tenant-based subsidy can be cut if household size decreases, and the household cannot relocate rapidly enough to escape having an unaffordable rent. In this scenario, if the household is still actively pursuing relocation and paying what it can, it should not be regarded as noncompliant. The same would be true if the private owner increases the rent to a level which the family cannot afford.

- "*PHA Plan*"—this refers to the Moving to Work (MTW) Agency Plan and the Annual MTW Plan. It would be helpful to include citations for this or a definition of MTW.

- "*Resident*"—same comment as above on "split" arrangements. It should be recognized that under VAWA or family break-up, there may be changes to the head of household or leaseholder, and this definition covers the entire family and is not limited to the head of household or leaseholder.

970.7 General requirements for HUD review and approval of a demolition or disposition application

970.7(a) This section does not address the situation when a PHA submits an application, HUD conditions approval of the application, and the PHA does not meet the conditions. HUD should be clear that it will rescind approval and if the PHA still proceeds, file for injunctive relief. While HUD may also cut off funding, this is not necessarily the best way to meet the needs of the community.

970.7(c)(1) refers to a significant amendment to the PHA Plan, but the current PHA Plan regulations leave the definition of "significant amendment" up to each PHA. The proposed rule does not make it sufficiently clear that a PHA must make a significant amendment to its Annual Plan if it wishes to introduce an application in between Annual PHA Plans. As written, it might be possible for a PHA to simply interpret the proposed rule to only apply to a demolition or disposition application that a PHA has chosen to define as "significant." The following language should be added to § 970.7(c)(1):

> "Any amendment of a PHA Annual Plan to propose or amend an application for demolition or disposition **shall be considered a significant amendment** for purposes of 24 C.F.R. §. 903.21(b) and § 903.7(r)(2)(ii). Failure of the PHA to amend its PHA Annual Plan prior to submitting the demolition or disposition application or amended application shall result in an automatic rejection of the proposed demolition or disposition."

To further clarify this point, HUD may want to revise 24 C.F.R. Part 903 to illustrate that a demolition and disposition application, and a significant revision to the same, would be considered a significant amendment requiring public and resident consultation process in advance.

In the reference to qualified PHAs in Section 970.7(c), it is not clear that there would be any RAB and resident consultation process beyond the public hearing. It may be helpful to cross-reference the resident consultation provision to clarify that Qualified PHAs are not exempt from such consultations.

HUD should also require that the description of the demolition or disposition action in the PHA Plan is identical to the application submitted to HUD. The existing rule contains this language at § 970.7(a)(1) but the proposed rule deleted it. The language should be retained.

970.7(c)(3) should include the bedroom size and unit type for units proposed for demolition and disposition. For example, it may be that the proposed demolition or disposition will have a significant impact on the supply of wheelchair accessible units, or units with other unique features, and this is something that would need to be part of the evaluation of the impact of the PHA's proposal.

970.7(c)(4)(iii) should require enough details about the anticipated subsidies so that long-term use restrictions are identified, as well as rent structure for all of the units (i.e., how many would have Brooke Amendment rents, and how many may have other types of rent or income restrictions but may not be parallel to Brooke Amendment), as well as targeting to ELI, VLI, and LI. The reference in (iv) on "if any" is not clear—it makes it appear that the plan for replacement

housing is optional, although it may be that HUD meant if there was any demolished or disposed of housing. The assumption should be that there is a replacement housing plan so that HUD can be sure that there is full utilization of subsidy in accordance with 42 U.S.C. § 1439.

970.7(c)(7), as explained in the "General Concerns" section above, should be reorganized and merged with the requirements of Section 970.21. For clarity, we've suggested revisions to this subsection within the context of the proposed rule.

970.7(c)(7) should include resident notification of grievance rights. See our comment regarding grievance rights in the "General Concerns" section above, under "Resident Relocation."

970.7(c)(7) should also include language that resident consultation is required for the relocation plan. Section 970.9(a)(2)(iii) requires consultation with residents regarding the relocation plan. It should be reiterated here. In addition, the relocation plan should indicate the number and size of units necessary to accommodate the needs of displaced residents. HUD does not require this information in either this section, or in § 21.

970.7(c)(7)(ii) should require the PHA to identify how many tenant-protection vouchers are being sought. Moreover, there should be the ability to have the TPV's take the form of PBV assistance.

970.7(c)(7)(ii) should also require identification of actual units of comparable housing. Where tenant-based vouchers are being offered, the PHA should be required to identify existing available units (owned and/or managed by landlords that participate in the Section 8 Housing Choice Voucher program) that meet displaced families' needs such as unit size and accessibility requirements.

§970.7(c)(7)(iv) should include a reference to CDBG to encourage collaboration with the local jurisdiction's housing and community development office. HUD should add:

> "An estimate of the costs for housing counseling services and resident relocation, and the expected source for payment of these expenses, **including the use of CDBG funds for housing mobility counseling services**."

970.7(c)(7)(v) Consider replacing the awkward term "non-minority area" with a more accurate term like "area of low minority concentration."

970.7(c)(8) should include the content of what was communicated to residents. Often, the only way to know if there was meaningful consultation is to see what it was, and evaluate it then from the standpoint of a resident who wouldn't have known anything else about the plan, options, requirements, etc. The PHA's responses to resident comments should be shared with those groups and be publicly available.

970.7(c)(13)(i) has a reference to "affordability" but the term is not defined. Normally this would include both targeting and how the rents are calculated—i.e., Brooke Amendment formula, and that the units are targeted to ELI, VLI, etc. If there is income tiering built into the revised structure, it should be included. In (ii) and (v), regarding the extent of public benefits for below FMV dispositions, the factors are so fluid as to not provide a meaningful standard by which commensurate public benefit can be evaluated.

970.7(c)(19)(i)(A) refers to how the proposed demolition and/or disposition will help the PHA meet its affirmative obligations, including, but not limited to, "the obligation and to overcome discriminatory effects of the PHA's use of 1937 funds pursuant to part I of this title and the obligations to de-concentrate poverty and affirmatively further fair housing." It looks like one or more words are missing here. In addition, it would be helpful to explain what would be sought here, and what kinds of actions PHAs would be expected to take.

970.7(c)(20) should include characteristics of unit types since there may be issues, as noted throughout our comments, where units with particular features are being lost as a result of demolition or disposition, and this may have a greater impact on future housing opportunities of persons with disabilities requiring certain design features than the general population.

970.7(d)(2) refers to a PHA not taking any action contrary to the terms and conditions of HUD's approval without prior written HUD approval. HUD should be clear, as we suggested above, that it can rescind its approval, file for injunctive relief, or cut off funds to ensure that the project only proceeds under the terms or conditions.

970.7(e) should be significantly revised as suggested below to designate required actions regarding (1) a PHA's amendment to its application and (2) application rescissions.

970.7(e)(1) should require that a PHA inform HUD immediately of a change relating to any representation made in a pending application and HUD should subsequently require an amendment to an existing application. HUD may define cases where the change is purely technical versus those which are substantive. For substantive amendments, there should be an opportunity for resident and public review and consultation. 970.7(e)(1) should read:

> "A PHA with a pending application for demolition or disposition must immediately inform HUD of any significant amendment to the certifications or representations which the PHA made in an application under this Part. HUD shall cease processing the application until the PHA provides an amended demolition or disposition application which **includes evidence demonstrating that the residents had an opportunity to review and comment on the amended proposal for demolition or disposition** as set forth in subsection (a)(7) and (a)(9) of this section and that the PHA has described the amended demolition or disposition in the PHA Annual Plan and timetable under 24 C.F.R. Part 903, as set forth in subsection (a)(1) of this section."

970.7(e)(1) should also define what information needs to be provided to HUD in the event a PHA wishes to amend its application. HUD should not allow additional demolition, disposition, or displacement activities pending HUD review, but this may be a basis to extend the timelines for demolition or disposition.

970.7(e)(2) should explicitly prohibit demolition, disposition, or displacement activities when such a request is pending and there should be timely communication of the rescission request to residents and the public. If there is ultimately no rescission, this would be a basis to extend the timeline for demolition or disposition. Thus, for example, a PHA may originally have pursued demolition or disposition, but realized that RAD, Choice Neighborhoods, or CFFP may provide a better means to achieve community goals for a site.

This section should also include language that allows residents, resident organizations, RAB, and other stakeholders to submit information that is in conflict with a PHA's submitted application. The following language should be added to (e)(2):

> "HUD will also consider a request by the affected residents, resident organizations, RAB, or other stakeholders such as housing applicants or local advocates, to rescind an earlier approval, where such request is also supported with documentation of a significant change in or the removal of the conditions that led to the original request."

970.9 Resident participation—consultation and opportunity to purchase

970.9(a) should be slightly edited by bringing the proposed words "and written in plain language" up to the beginning, rather than being buried in between disability access text. It could read:

> 970.9(a) *Resident consultation*. PHAs must ensure that they communicate with public housing and rental assistance applicants and residents using plain language, and in a manner that is effective for persons with…"

970.9(a)(2) only requires the application to be available at one of three options. In order to reach the maximum number of residents and resident groups including people with disabilities, HUD should require copies to be available electronically with paper copies at multiple locations. The final rule should require draft copies of the application in the planning stage as well as the draft application prior to submission to HUD to be:

- Available on a readily identifiable page on the PHA's website;
- Provided to residents and groups listed in 970.9(a)(1) without charge;
- Available for review at the property proposed for demolition/disposition; and,
- Available for review at the central office.

970.9(a)(2) should have an additional requirement obligating a PHA to make *notification* of all resident consultation activities, such as meetings and hearings, public by (1) posting on a readily identifiable page on the PHA's website, (2) sending electronic notices to residents and groups listed in 970.9(a)(1), (3) posting copies at properties proposed for demolition or disposition, and (4) posting notices at the central office. For those unable to attend public hearings due to disability or illness, HUD should allow residents to submit comments on-line and provide instructions on how to do so.

We strongly suggested in the "General Concerns" section that resident consultation be required at all planning stages. Should HUD choose not to adopt our recommendation, then 970.9(a)(2) should have an additional requirement ensuring that there are at least two resident consultation meetings regarding the proposed activities, as required in RAD, and that there be at least two weeks in between meetings.

970.9(a)(2) should have an additional requirement calling for resident and public notification and consultation regarding any material change to the application. See our comments on 970.7(e), above.

970.9(a)(2)(i) should add the word “complete” to describe the final application. In the past, some residents and advocates were only provided partial applications for comment, with crucial components missing, rendering the consultation ineffectual.

970.9(a)(2)(iii) requires a PHA to consult with those listed in 970.9(a)(1) regarding the relocation plan. The final rule should be more explicit here, requiring consultation about the relocation plan to include providing residents with the information called for in 970.7(c)(7) and 970.21.

- If the final rule accepts the suggestion to add a requirement for consultation during the planning phases (as explained in our “General Concerns” section above), then a reasonable timeframe for consultation regarding the relocation plan should be defined as 45 days.
- If, however, HUD does not accept the suggestion of requiring consultation during the planning phases, then a reasonable timeframe for consultation regarding the relocation plan should be 90 days.

970.9(a)(2)(v) requires PHA consultation with those listed in 970.9(a)(1) to take place in a reasonable timeframe in which they can submit written comments.

- If the final rule accepts the suggestion to add a requirement for consultation during the planning phases (as explained in our “General Concerns” section above), then a “reasonable timeframe” should be defined as 45 days, consonant with the timeframe of an Annual PHA Plan.
- If, however, HUD does not accept the suggestion of requiring consultation during the planning phases, then “reasonable timeframe” should be defined as 90 days.

970.9(a)(2)(vii) should be added to cover the substantive areas that must be discussed during resident consultation. The section should explicitly include that a PHA must disclose the information set forth in Notice PIH 2012-7, at 4.C, “Consultation for Disposition with Development:”

> “Specifically, residents and resident groups are presented with information on the number and affordability of the public housing units and other affordable units to be developed, the number of bedrooms per unit, the screening and application requirements for new units, the ownership structure of the units, and any opportunity to return or other occupancy preferences for displaced residents. If such information is not available prior to the SAC application or subject to change after final SAC action, residents are informed of the potential for development plan revisions and provided with a means, such as a newsletter or open meeting, for how such revisions will be presented to residents.”

The proposed rule addresses all but two of the information items listed in the Notice. However, this information is not explicitly required as part of the resident consultation requirement; rather the information is required as part of complete application for disposition for less than FMV in Section 970.7(c)(13)(i). It should be explicitly included here.

In 970.9(a)(2) The actual language on consultation, (i) through (vi), is not phrased well, and should be rewritten. For example, what does “informed by the PHA” mean in (iv)? If residents are to submit comments directly to HUD, the notice needs to advise them how to do it including any time frames.

970.11 Procedures for the offer of sale to an Established Eligible Organization

HUD should address what happens if more than one eligible organization submits a proposal (which has been a subject of past litigation). There are no meaningful standards in the proposed rule about what would be the "best proposal" (the way that HUD decides which proposal is accepted).

970.12 Civil rights and equal opportunity review

See the comments above in the "General Concerns" section.

970.13 Environmental review requirements

No comments

970.14 Section 3 compliance

See the comments above in the "General Concerns" section.

970.15 Specific criteria for HUD approval of a demolition application

970.15(a)(1), regarding project obsolescence, see " General Concerns" section under "Unit Replacements."

970.15(a)(2) HUD and PHAs should consider other financing, not just the HCC cap, in evaluating the cost-effectiveness of the proposed demolition. PHAs should be required to consider, for example, other sources of capital that would make rehabilitation financially feasible. In addition, in determining whether a PHA has met the criteria for cost-effectiveness, HUD should weigh such factors as whether the demolition will erode basic tenant protections, target VLI and ELI households, and preserve long-term affordability.

970.15(b) The criteria for using partial demolition to achieve "viability" for the remainder of the site are extremely vague. Since HUD has the statutory duty to monitor full utilization of housing assistance, HUD must ensure that any loss of units is absolutely necessary and that other alternatives have been fully explored.

970.15(c) With respect to land-banking, there should be a timetable for the creation of low-income housing, and what has occurred with banked land must be part of what it periodically reported to HUD (with an opportunity for public and resident review and comment). The low-income housing must have (1) recorded long-term or permanent use restrictions, (2) a rent structure like that of the Brooke Amendment to the maximum extent feasible, and (3) ELI and VLI targets similar to what would have existed had the site remained public housing. It is unclear what is permissible under the proposed rule. For example, could a PHA arrange for a "swap" of land which it controlled for other land that might be more desirable for development, as long as it was getting FMV or better in the swap arrangement? It may be, for example, that the land that the PHA was holding onto wasn't ideal for housing development but becomes competitive for other development in the future, and those interested in that development control other land that would be desirable and appropriate for development of low-income housing.

970.15(d) As noted in other comments, the 2-year period for demolition should be tolled if there is an amendment or rescission proposed, and subject to extension. It may be, for example, that a PHA originally thought there was no alternative to use of Part 970, but a subsequent opportunity has become available through RAD, CNI, CFFP, etc., which the PHA wants to explore further, and this should be encouraged.

970.17 Specific criteria and conditions for HUD approval of a disposition application

970.17(a) regarding density or feasible operation in relation to the "condition of the surrounding area," see the "General Concerns" section under "Unit Replacements."

970.17(b)(1-2) regarding replacement units, see the "General Concerns" section under "Unit Replacements," particularly our opposition to the 75% replacement threshold.

970.17(b)(3)(i) wrongfully assumes that replacement housing should be built elsewhere and mandates it. It may be that the existing land will permit energy efficiency, better unit configurations, or the like, but that the current structures will not, and that demolition and disposition to another entity will allow a new community to thrive on the other land. Obviously there would need to be an evaluation of site and neighborhood standards, including through a fair housing and opportunity lens, but use of the existing land should not be rejected out of hand.

970.17 (b)(3)(ii) requires that the PHA do more than just identify the replacement units or land, but actually have control, and this should be a precondition of approval; a PHA's subsequent failure to have control should result in rescission of the approval. In addition, the preference should be to "build first," and to have created the new housing supply, before any demolition proceeds. Otherwise, history has well demonstrated that there can be losses without restoration of an equivalent affordable housing supply elsewhere.

970.17(c), as noted above in the "General Concerns" section, the standard for obsolescence is so vague as to be meaningless. Moreover, while mixed finance redevelopment may be an acceptable method of rehabilitation, it should not be assumed, simply because the method is proposed, that it automatically meets the "best interests" test. HUD should explain what factors it will use to evaluate "best interests," and it should be understood that what may be in the PHA's best interests and what may be in the residents' best interests requires a separate evaluation. Moreover, the resident "best interest" evaluation should not only look at current site residents, but the PHA's entire portfolio, as well as future housing opportunities for applicants. Thus, for example, if a significant number of accessible units will be lost due to demolition and disposition, this is likely to have an impact on applicants needing those features, and the PHA should be expected to address how those future needs will be met.

970.19 Requirements for the disposition of a project

970.19(c) should clarify that permanent use restrictions are permissible to the extent allowed by state or local law (30 years should be seen as a floor, and not a ceiling). Given that the period of use restrictions may outlast a PHA, the next to last sentence could add "(or such successor in interest as authorized by law)" after "PHA." In addition "or successor" could be added after the two appearances of "PHA" in the last sentence.

970.19(d) includes circumstances in which there is only a partial demolition needed. Therefore, the words "full or partial" could be added after "HUD will approve a." The words "any

authorized subsequent disposition" can be added in place of "the disposition" toward the end of the sentence. The phrase "of only that vacant land comprising the project" could be removed.

970.19(f) refers to "other removal application" in addition to disposition. It is not clear what this may mean, and HUD should clarify, if something other than demolition or disposition is referenced, what exactly such a "removal" would be.

970.19(g) might include land banking, and HUD does not appear to have established a similar 2-year period for land banking. The PHA should, however, spell out and periodically report on what land it has banked and its development plans and progress.

970.20 Use and treatment of proceeds

970.20(a)(3)(iv)(A) refers to "safe harbors" and the regulatory or statutory cross-reference for this should be included, so that it is clear what standards are being applied.

970.20(d) HUD should confirm that MTW agencies that generate money from Section 18 activities must comply with these provisions and utilize proceeds from demolitions and dispositions according to Section 970.20. HUD should consider referring to MTW throughout the final rule to be clear that MTW agencies are not exempt from any part of Section 18 (MTW PHAs may argue that only those specific portions of the regulation that refer to MTW apply).

970.20(e) remedies should include injunctive relief to enforce the conditions included in any demolition or disposition approvals.

970.21 Relocation of residents

In addition to our comments above in the "General Concerns" section, we offer the following suggestions on resident relocation.

It should be made clear in all references to relocation, that relocation benefits cover both temporary and permanent relocation.

970.21(a) uses the term "residents," but as noted above, it is not clear if this means all individuals in the household, all households, all adult occupants of the household, or something else (it is not limited to the leaseholder or head or co-head of household).

970.21(a)(5) requires PHAs to notify residents that are being displaced of relocation information including a description of the comparable housing options that the PHA is offering to the resident. HUD should require that the description of comparable housing include the identification of units that are actually available. When tenant-based vouchers are offered as an option, for example, the description must include the identification of specific units that meet the family's needs and are owned/managed by landlords who participate in the voucher program.

970.21(d) contemplates "replacement housing" and we urge HUD to include a requirement that a significant portion of the replacement housing be located in non-minority concentrated, low poverty areas, and that residents be specifically offered the opportunity to return to these off-site units – not only the units redeveloped on-site.

970.21(d) should also include in the plan of return any other relocation costs as with the first move (for example, if there are security deposits or utility deposits involved).

970.23 Costs of demolition and relocation of displaced residents

The language in (b) is not as clear as it could be that this is only related to demolitions approved under Part 970, Subpart A; the phrasing could be construed to say that this only refers to Capital Funds, and that you could use other funds even if the demolition was not approved.

970.25 Required and permitted actions prior to approval

See our comments in the "General Concerns" section.

970.27 De minimis exception to demolition application requirement

No comments.

970.29 Criteria for HUD disapproval of a demolition or disposition application

Similar to our comments above in Section 970.7(e)(2) regarding allowing residents, resident organizations, or RAB to submit information that is in conflict with a PHA's application when an application is pending, this section should explicitly require HUD to consider information and data submitted by residents, resident organizations, or RAB. In addition, HUD should welcome input from other stakeholders such as applicants, legal services organizations, and community advocates. In some cases, these groups are in the best position to identify issues in conflict with a PHA's application. The following language should be added as 970.29(d):

> "HUD shall consider a request by the affected residents, resident organizations, RAB, or other stakeholders such as housing applicants or local advocates, to disapprove an application, where such request is supported with documentation of information and data that is inconsistent with any certification or submission made by the PHA."

970.31 Effect on Operating Fund Program and Capital Fund Program

No comments.

970.33 Demolitions due to emergency, disaster, or accidental loss

See comments above in the "General Concerns" section.

970.35 Removal of all projects in the PHA's public housing inventory

The removal of a PHA's entire public housing inventory is increasingly common, according to HUD, yet has incredibly broad implications for the future of the nation's affordable housing stock. Even in cases where a PHA is moving to a model of supplying affordable housing through Section 8 tenant-based and project-based assistance, and similar numbers of families are assisted, there are serious questions as to any subsequent program's effectiveness in meeting the community's needs. Public housing units and the public housing model provide a supply of housing insulated from many of the pressures of the market. Substituting new models for low-income housing must come with similar protections for the housing supply or the risk of loss will

increase. The disposition and/or demolition of a region's entire public housing inventory also raises serious fair housing and civil rights concerns.

HUD must implement new standards and a more rigorous process when a PHA removes all projects from its public housing inventory. First, HUD should hold PHAs to a heightened standard for application approval. While we suggest that for all demolitions and/or dispositions, a PHA should be required to build 1-for-1 replacement housing that meets at least the same level of tenant protections and long-term affordability as public housing, this requirement is even more important if there is no public housing left in the jurisdiction that will adequately target VLI and ELI families. In addition, HUD should require an even more robust public participation process than suggested in the proposed rule for regular dispositions (and as suggested in our comments). For example, resident consultation requirements should specifically include notice that the proposed demolition and/or disposition will constitute the removal of all public housing in the jurisdiction. HUD should consider other heightened requirements when a PHA proposes to demolish and/or dispose of all of its public housing. These requirements should then be added to either this Section or Section 970.7 (general application requirements).

970.37 Reports and records

970.37(3)(i)(B) should use the plain language in the preamble. Rather than the proposed "Fair Housing Act protected classes of relocated residents," the final rule should read "Demographic information on family size, race, national origin, sex, and disability of relocated residents."

970.37(3)(i) allows HUD the authority to require reports from PHAs about demolition or disposition actions. We strongly support additional HUD oversight after HUD approval of a demolition or disposition project. The report on resident relocation should include information about housing searches for Section 8 vouchers, including the PHA policy on extension of search periods, success rates, and rent burdens, and what the PHA has done for particular families who were unable to successfully secure a Section 8 apartment within the search period. The report should also continue to track families who were placed through use of Section 8 vouchers to determine if there has been subsequent displacement for reasons not due to tenant fault (including situations where family size changes and the family cannot afford to remain with a reduced payment standard) and the PHA's efforts to help such families continue to secure affordable housing. As discussed under relocation, above, there should also be options for families relocated into public housing because they weren't able to successfully secure Section 8 housing within the search period to continue to qualify for Section 8, and for those who prefer to be in public housing (because of rent/eviction protections or services or unit features) to continue to qualify for public housing units as they become available.

970.37(3)(iv) includes reporting on use of the property and should include any land banking, and sufficient detail so that resident protections, rent levels (i.e., comparability to Brooke Amendment) and income targeting as well as use restrictions can be evaluated.

The reports required by HUD under this part should be available for resident/RAB and public review and comment as part of the PHA Plan process, so that there is local transparency about what is happening with relocation, proceeds, land, and commensurate public benefits. There should be an opportunity for residents and the public to comment on these issues. PHAs should share comments received with HUD and their responses with residents and the public.

Subpart B: Real Estate Transactions: Retention of Projects by Public Housing Agencies

See comments on Subpart B above in the "General Concerns" section.

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

Subpart A: Required Conversion of Public Housing Developments

972.103 Definition of conversion

Given that project-based vouchers are a subset of the tenant-based assistance program, HUD should clarify that the use of project-based vouchers (PBV) would constitute "tenant-based assistance" under this Part.

Subpart B: Voluntary Conversion of Public Housing Developments

972.203 Definition of "conversion"

Same comment as above. HUD should clarify that the term "tenant-based assistance" includes project-based vouchers (PBVs).

Thank you for the opportunity to submit these comments. Please contact Deborah Thrope, National Housing Law Project, at 415-546-7000 x. 3124 or dthrope@nhlp.org if you have any questions.

Sincerely,

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