

to required conversions). HUD has decided to significantly revise the cost methodology, based both on the public comments received on the voluntary conversion proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue a new proposed rule published elsewhere in today's **Federal Register**, which provides the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Since the cost methodology necessary to conduct the required cost comparisons has not yet been finalized, HUD is delaying the effective date of this rule for a period of six months (180 days) following publication (as opposed to the customary 30-day period). HUD's goal is to have a final rule establishing the cost methodology in effect by this date. Delaying the effective date of this rule for six months will permit the final rule to take effect as close as possible to the targeted effective date for the cost methodology.

While the cost methodology is being completed, PHAs may wish to prepare for required conversions by using the proposed methodology contained in the HUD proposed rule being published today. However, because the final methodology may differ from what is contained in the proposed rule, PHAs should not assume that the proposed cost test will be final with respect to possible required or voluntary conversions. HUD will revise the PHA Plan instructions to accommodate submission of any required conversion plan.

#### *D. Change Regarding HUD Actions With Respect to Required Conversions*

1. *Clarification of HUD Actions with Respect to Required Conversions.* The final rule clarifies the actions HUD will take if a PHA fails to properly identify a development for required conversion, or does not submit a conversion plan for a development in the PHA Annual Plan following the Annual Plan in which the development was identified as subject to required conversion. Specifically, the final rule provides that HUD will disqualify the PHA from HUD funding competitions and direct the PHA to cease additional spending in connection with a development that meets, or is likely to meet, the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety. HUD may also take any or all of the following actions: (1) Identify developments that fall within the statutory criteria where the PHA has

failed to do so properly; (2) take appropriate actions to ensure the conversion of developments where the PHA has failed to adequately develop or implement a conversion plan; (3) require the PHA to revise the conversion plan, or prohibit conversion, where HUD has determined that the PHA has erroneously identified a development as being subject to the requirements of this section; (4) authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund 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; and (5) any other action that HUD determines appropriate and has the authority to undertake.

2. *HUD review of conversion plans.* The final rule clarifies that HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

### **III. Discussion of Public Comments Received on the July 23, 1999, Proposed Rule**

The public comment period closed on September 21, 1999. By close of business on this date, HUD had received five public comments. Comments were submitted by a PHA; two of the three main organizations representing PHAs; and two legal aid organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the July 23, 1999, proposed rule and HUD's responses to these comments.

#### *A. Comments Regarding Standards for Identifying Public Housing Developments Subject to Required Conversion (§ 972.04 of the Proposed Rule; § 972.124 of This Final Rule)*

The proposed rule at § 972.104 described the standards for identifying public housing developments subject to required conversion.

#### **1. Comments Regarding the Required Vacancy Rate**

*Comment: Proposed definition of "distressed housing" failed to consider factors that may be relevant to*

*conversion.* Three commenters wrote that the proposed vacancy rate was overly inclusive and did not comport with the guidelines established by the Commission on Severely Distressed Public Housing (hereafter "the Commission"). The commenters were concerned that viable developments would unfairly be required to conduct the required cost analysis. One of the commenters wrote that the proposed rule did not consider current market and employment conditions that affect the vacancy rate. The commenter also wrote that the proposed rule failed to address the fact that developments may become distressed due to lack of modernization funding. Another commenter wrote that the proposed 10 percent vacancy rate was too low, and noted that the Commission used a 15 percent vacancy rate.

*HUD Response.* HUD has revised the rule to be more sensitive to the concerns expressed by the commenters. Specifically, the final rule raises the vacancy rate used for purposes of determining distress from 10 percent to 15 percent for the first five years following the effective date of the final rule. A 12 percent vacancy will be used following the expiration of this five-year period. The purpose of the required conversion program is to identify those developments whose non-viability and cost, relative to vouchers, merit their permanent removal from public housing stock, even though the PHA did not previously decide to take this step on its own. The use of a higher vacancy rate better focuses required conversion on the situations where this step is most clearly needed.

*Comment: Final rule should require that a PHA take remedial steps in those cases where the PHA has intentionally created vacancies.* Two commenters wrote that the proposed vacancy criterion failed to consider whether a PHA has intentionally or artificially created vacancies at the development. According to the commenters, a PHA could create such vacancies by failing to make timely repairs or failing to lease available units. The commenters agreed that to "the extent that a PHA intentionally or artificially creates vacancies at a development, HUD should require the PHA to take corrective actions necessary to lease the units." One of the commenters suggested that HUD include an additional category of units that will not be considered in the vacancy determination—units that are intentionally vacant as a result of a PHA's desire to trigger mandatory conversion.