

the "FMRs may not be fair." The commenter suggested that PHAs be required to consider "submarket rents," exception rents, waivers of the FMRs, and payment standards above the FMRs, which would increase the cost of providing Section 8 tenant-based assistance.

HUD Response. In response to this comment, HUD has revised the cost methodology to provide that, for purposes of the required cost comparison, the PHA should use the higher of the average cost (gross rent) for voucher units occupied by recent movers, or the applicable Section 8 payment standard for the jurisdiction or designated part of the FMR area.

Comments regarding PHA capital costs as part of the cost-comparison between public housing and vouchers. One commenter wrote that a revised method of calculating accrual costs would be appropriate. Specifically, the commenter wrote that it would be more appropriate and customary to calculate accrual based on the hard costs of construction, or revitalization, rather than the total project cost.

HUD Response. HUD has amended the proposed methodology to address the concerns raised by the commenter. Specifically, the cost methodology has been revised to provide that accrual will be calculated using the portion of the latest published HUD unit TDC limits for the area that HUD attributes to the costs of housing construction. In addition, the amortization period has been changed so that the amounts used for accrual are consistent with the amounts estimated in the HUD-sponsored comprehensive study of public housing capital needs released in 2000.

Comment: Comments regarding internet cost calculator. The preamble to the July 23, 1999, proposed rules stated that HUD is considering establishing a web-based cost comparison calculator on HUD's internet homepage to assist PHAs in conducting the cost comparisons required by the proposed rule. (See 64 FR 40232, third column; and 64 FR 40241, first column.) Three commenters supported the idea of a web-based cost calculator, writing that it would reduce the workload on PHAs and provide consistency. Another commenter, however, wrote that it is not possible to comment on the web-based calculator until additional details are provided. The commenter also suggested that the methodology used by the web-based calculator should be subject to notice and comment rulemaking procedures.

HUD Response. HUD agrees that an internet cost calculator will reduce PHA

administrative burden. HUD also agrees that such a calculator will help to ensure the accuracy and consistency of the required cost comparisons. To assist PHAs in completing the required calculations, HUD has developed a spreadsheet calculator that will be available for PHAs to download from the HUD Homepage (<http://www.hud.gov>). The spreadsheet calculator is designed to walk housing agencies through the calculations and comparisons laid out in this proposed rule and allows PHAs to enter relevant data for their PHA and the development being assessed. Results, including net present values, are generated based on these PHA data. Sample pages from the spreadsheet calculator are provided as a part of this proposed rule, showing data for the example used here to illustrate the cost comparison methodology.

V. Issue Highlighted For Public Comment

HUD is seeking comment on whether net proceeds from the sale or lease of a property should be included in the cost test calculation for conversion in cases where a property is determined to have significant market value for an alternative use. In the current proposed rule, voucher costs include annual voucher and administrative costs and demolition and relocation costs. HUD is considering whether to include these net proceeds, which would offset the cost of vouchers.

VI. Findings and Certifications

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

(1) *A Substantial Number of Small Entities Will Not be Affected.* The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. Most PHAs with developments large

enough to be subject to required conversion are located in larger political jurisdictions. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on larger troubled agencies. For all other PHAs, conversion would be undertaken on a voluntary basis.

(2) *No Significant Economic Impact.* The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property, and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

Environmental Impact

This proposed rule involves external administrative or fiscal requirements or procedures that relate to the discretionary establishment of cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That Finding is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt