

state law within the meaning of the Executive Order.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

#### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled “Regulatory Planning and Review.” OMB determined that this rule is a “significant regulatory action” as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department’s Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

#### *Catalog of Federal Domestic Assistance Number*

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.850.

#### **List of Subjects in 24 CFR Part 972**

Grant programs—Housing and community development, Low and moderate income housing, Public housing.

For the reasons discussed in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations as follows:

#### **PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE**

1. The authority citation for 24 CFR part 972 continues to read as follows:

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

2. Add an appendix to part 972 to read as follows:

#### **Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance**

##### **I. Public Housing-Net Present Value**

The costs used for public housing shall be those necessary to produce a viable

development for its projected useful life. The estimated cost for the continued operation of the development as public housing shall be calculated as the sum of total operating cost, modernization cost, and costs to address accrual needs. Costs will be calculated at the property level on an annual basis covering a period of 20 years (or an alternative period as discussed in paragraphs I.B. and I.E. below). All costs expected to occur in future years will be discounted, using an OMB-specified real discount rate provided on the OMB Web site at <http://www.whitehouse.gov/OMB/Budget>, for each year after the initial year. The sum of the discounted values for each year (net present value) for public housing will then be compared to the net present value of the stream of costs associated with housing vouchers.

Applicable information on discount rates may be found in Appendix C of OMB Circular A–94, “Guidelines and Discount Rates for Benefit Cost Analysis of Federal Programs” which is updated annually, and may be found on OMB’s Web site at <http://www.whitehouse.gov/OMB>. All cost adjustments conducted pursuant to this cost methodology must be performed using the real discount rates provided on the OMB Web site at <http://www.whitehouse.gov/OMB/Budget>. HUD will also provide information on current rates, along with guidance and instructions for completing the cost comparisons on the HUD Homepage (<http://www.hud.gov>). The Homepage will also include a downloadable spreadsheet calculator that HUD has developed to assist PHAs in completing the assessments. The spreadsheet calculator is designed to walk housing agencies through the calculations and comparisons laid out in this proposed rule and allows housing agencies to enter relevant data for their PHA and the development being assessed. Results, including net present values, are generated based on these housing agency data. (Note that 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.

##### *A. Operating Costs*

1. Any proposed revitalization or modernization plan must indicate how unusually high current operating expenses (e.g., security, supportive services, maintenance, tenant and PHA-paid 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 or modernized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration, and management structure of the revitalized or modernized 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 or modernized 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 (P.L.L.O.T.) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per year. For example, if a development will have 375 units occupied by households and will have \$112,500 monthly non-utility costs (including pro-rated overhead costs and appropriate P.L.L.O.T.) and \$37,500 monthly utility costs paid by the PHA, and \$18,750 in monthly utility allowances that are deducted from tenant rental payments to the PHA because tenants paid some utility bills directly to the utility company, then the development’s monthly operating cost is \$168,750 (or \$450 per unit per month) and its annual operating cost would be \$2,025,000 (\$450 times 12 months times 375 units). Operating costs are assumed to begin in the initial year of the 20-year (or alternative period) calculation and will be incurred in each year thereafter.

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 or modernized 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 or modernized development are plausible, when the projected initial year per-unit operating cost of the renovated development is lower than the current per unit cost by more than 10 percent, then the plan should detail how the revitalized development will achieve this 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 20 percent, then the development-based method will be used to determine projected costs. The current costs will be divided by the sum of all occupied units and vacant units fully funded under the Performance Funding System (PFS) plus 50 percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are \$2,250,000 and it has 325 occupied units and 50 vacant units not fully funded under PFS (or a 13 percent overall vacancy rate), then the \$2,250,000 is divided by 350—325 plus 50 percent of 50—to give a per unit figure of \$536 per unit month. By this example, the current costs of \$536 per occupied unit are at least 10 percent higher (19 percent in this example) than the projected costs per occupied unit of \$450 for the revitalized development, and the reduction in costs would have to be detailed.