project density incident to the modernization of the rest of the project. The 1987 Act made no change in the disposition criteria.

Section 121 of the 1987 Act also mandated detailed requirements for a replacement housing plan for the provision of a decent, safe, sanitary, and affordable rental dwelling unit-on a one-for-one basis-for each public housing dwelling unit to be demolished or disposed of. The replacement housing plan must contain a schedule for completing the plan, within a period consistent with the size of the proposed demolition or disposition, but the schedule may in no event exceed six years. Questions have been raised regarding the meaning of "completion." "Completion" does not mean that the replacement housing must be built or rehabilitated within the six years. For replacement units developed under the public housing development program, the completion of the plan would be when units have reached the stage of notice to proceed for conventional units and contract of sale for Turnkey units. Other replacement plan requirements contained in the 1987 Act are (1) that the plan be approved by the unit of general local government¹ in which the project is located; (2) that the plan ensure that the rent paid by the tenant after relocation will not exceed that permitted under the Act; and (3) that there be no action to demolish or dispose of any unit until the tenant has been relocated to decent, safe, sanitary, and affordable housing that is, to the maximum extent practicable, of the tenant's choice. (Some persons displaced by a demolition or disposition activity are also covered by the Uniform Relocation Act, as described later.) The rule also allows replacement with units of different sizes, after analysis of local needs as determined by the PHA, to accommodate changes in local priority needs. However, at least the same total number of individuals and families must be accommodated. The regulatory amendments for implementation of these statutory requirements can be found in §§ 970.4(d) and 970.11 of both the interim rule and this final rule.

Approval of an application for demolition or disposition requires a commitment for the funds necessary to carry out the plan. To the extent funding is not provided from other sources (*e.g.*, from State or local programs or the proceeds of disposition), HUD approval of the application for demolition or

disposition will be conditioned on HUD's agreement to commit the fundssubject to availability of future appropriations-necessary to carry out the plan in accordance with its approved schedule. Because of the responsibility imposed on HUD to commit the funds necessary to carry out the plan, a high degree of certainty with respect to State and local commitments is necessary. Therefore, in order for HUD to determine HUD's commitment, at the time of application the PHA must provide written documentation of commitment of State or local funding for the replacement housing if that is what is contemplated in the replacement housing plan.

The statutory requirements for the plan enumerate the following types of eligible replacement housing, to be used singularly or in any combination: (1) The development of additional public housing dwelling units (by acquisition with or without rehabilitation or new construction); (2) the use of 15-year project-based assistance under section 8, when appropriated; ² (3) the use of not less than 15-year project-based assistance under other Federal programs; (4) the acquisition with or without rehabilitation or development of dwelling units assisted under a State or local government program that provides for project-based assistance that is, in terms of eligibility contribution to rent, and length of assistance contract (not less than 15 vears), comparable to assistance under section 8(b)(1) of the 1937 Act; or (5) any combination of such methods; or (6) the use of 15-year tenant-based assistance under section 8 (excluding rental vouchers under section 8(o)), including Section 8 Rental Certificates with 15-year funding subject to the special additional statutory constraints discussed below.

However, section 116(b) of the 1992 Act modifies the replacement housing plan requirements by permitting, where 15-year project-based assistance under section 8, 15-year project-based assistance under other Federal programs, and 15-year tenant-based assistance under section 8 (excluding vouchers) is not available, and where an application proposes demolition or disposition of *200 or more* units, the use of available project-based assistance under section 8 having a term of not less than 5 years, the use of available project-based assistance under other Federal programs having a term of not less than 5 years, and the use of tenantbased assistance under section 8 (excluding vouchers) having a term of not less than 5 years, respectively.

Note: In the case of 15-year project based assistance under other Federal programs, the Department has determined that low-income housing credits under Section 42 of the Internal Revenue Service Code is a Federal program providing 15-year project-based assistance and, therefore, qualifies as a source of replacement housing. Any replacement housing plan proposing the use of these credits must assure that the lowincome housing units in the low-income housing credit project which are designated as replacement housing will be reserved for low-income families for the requisite period. Units which at the time of allocation of the credit are also receiving Federal assistance under Section 8 (except tenant-based assistance) or Section 23 of the Act, or Section 236, 221(d)(3) BMIR or Section 221(d)(5) of the National Housing Act, or Section 101 of the Housing Act of 1965, or other similar Federal program, are not eligible as replacement housing under this paragraph.

However, in the case of an application proposing demolition or disposition of 200 or more units, not less than 50 percent of the dwelling units for replacement housing shall be provided through the acquisition or development of additional public housing dwelling units or through project-based assistance, and not more than 50 percent of the additional dwelling units shall be provided through tenant-based assistance under section 8 (excluding vouchers) having a term of not less than 5 years.

5 years. Section 116(b) also provides that, in any 5-year period, a PHA may demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned and operated by the PHA, without providing an additional dwelling unit for each public housing dwelling unit to be demolished, but only if the space occupied by the demolished unit is used for meeting the service of other needs of the public housing residents. It should be noted that this provision applies only to demolition and not to disposition.

The provisions of section 116(b) are considered self-executing also. Accordingly, this final rule contains revisions to \S 970.11(a) and creates a new \S 970.11(j).

The following statutory limitations on the use of fifteen-year section 8 tenantbased assistance should be kept in mind:

With the exception of applications for demolition or disposition of 200 or more

¹The Department has interpreted the phrase "unit of general local government" to mean the chief executive officer, e.g., the mayor or the county executive, as discussed later in this preamble.

² Replacement housing under this provision is limited. When section 121 of the 1987 Act was enacted, all Certificate Program funding was appropriated with 15 years of budget authority and, therefore, was readily available with a 15-year term. However, since 1989, Certificate Program funding has been appropriated with only a 5-year term, except for the special appropriations for Public Housing Demo/Dispo replacement housing. The last such special appropriation was in FY 1990.