

Act), because the legislative provisions for that program contain separate requirements on replacement, rights of tenants in occupancy, public hearings, and use of sale proceeds.

HUD does not believe that Congress intended to make the disposition requirements applicable to future approvals for sale of Mutual Help units. Since approval for sale to eligible homebuyers is incident to approval for development, imposing the disposition requirements would seriously hinder, if not entirely preclude, development of new Mutual Help projects that have been expressly authorized by Congress as the principal vehicle for additional units under the Indian Housing Program. Also, we do not believe that Congress intends to treat future approvals for homeownership sales under the Section 5(h) Program as dispositions subject to part 970. Property that would be suitable for homeownership could not satisfy the disposition criteria, so that the effect of interpreting the disposition requirements of section 18 as applicable to the Section 5(h) Program would be de facto repeal of the program. This would be contrary to the Conference Report language regarding section 123(d) of the 1987 Act, which states that "any homeownership program in existence prior to enactment may be continued under existing requirements * * *"[H.R. Rep. No. 100-426, 100th Cong., 1st Sess. p. 175 (Conference Report on S. 825)] Also, it should be noted that the National Affordable Housing Act subjects 5(h) proposals to replacement housing requirements contained in the HOPE for Public and Indian Housing Homeownership (HOPE 1) program. This represents further evidence of congressional intent that 5(h) sales not be subject to the disposition requirements of section 18. However, proposals by a PHA to demolish units that are the subject of these various homeownership programs would have to satisfy the demolition requirements of section 18 and part 970.

In keeping with section 412(b) of NAHA, the provisions of this rule do not apply to the disposition of a public housing project in accordance with an approved homeownership program under title III of the 1937 Act, as added by section 411 of that legislation, (HOPE 1). In the case of a homeownership proposal under HOPE 1 or section 5(h) from a PHA involving partial or total demolition of units, Section 18 and this rule apply. HOPE for Homeownership of Single Family Homes (Hope 3) proposals involving public housing units approved prior to the 1992 Act are likewise covered by the requirements of

section 18. [The 1992 Act took scattered-site single family public housing from under the requirements of HOPE 3 and moved it to HOPE 1.]

Criteria for Demolition or Disposition

None of the commenters objected to the change in the disposition criteria under the interim rule. Some, however, objected to the language in place before the 1988 interim rule regarding the criteria for demolition which did not change because of the 1987 Act amendments. The language to which the commenters objected is § 970.6(a)(2), which lists adverse neighborhood conditions among the three types of "major problems indicative of obsolescence." Section 970.6(a)(2) was included in the interim rule merely to provide the context for the change that combined "obsolescence as to physical condition, etc." with "no reasonable program of modifications, etc." as necessary criteria to justify demolition. Although the language in question is not open to public comment, the next paragraph provides clarification on this issue.

Concern for this issue reflects a misreading of the fundamental rationale of the whole of paragraph (a) of this section. The commenters mistakenly assume that demolition is necessarily justified when any of the problems listed in subparagraphs (a)(1) through (3) are found to exist. That is not the case. The provision is not intended as a simplistic formula, and no such formula would be adequate for the kind of complex analysis that is called for in making these types of determinations. The Department believes that Congress intended a common-sense viability determination, based on a thorough examination of all of the facts that are pertinent to both obsolescence and the feasibility of rehabilitation.

One commenter objected to § 970.6(b)—the alternative criterion that applies in cases of partial demolition only; i.e., to permit demolition of a portion of a project where demolition will help assure the useful life of the remaining portion of the project. [Where demolition of all units of a project is proposed, the only option is the criterion of paragraph (a). Where partial demolition is proposed, the PHA has the choice of seeking approval under either paragraph (a) or (b)]. This commenter, expressing concern about possible abuse, urged further amendment of the regulation to add guidelines for interpreting the alternative criterion in paragraph (b).

The Department believes that Congress intended to give PHAs reasonable discretion in making the

judgments required to determine when partial demolition may be justified to "help assure the useful life of the remaining portion of the project." However, the Department is considering providing some guidance on this provision in the revision to the Demolition/Disposition/Conversion Handbook (HUD 7486.1).

Tenant Consultation

While not making specific recommendations for changes in the requirements for tenant consultation (see § 970.4(a)), some commenters expressed concern about this subject. Neither the interim nor the final rule changes this provision of the old regulation. However, in view of the comments, the Department takes this opportunity to clarify that this regulatory requirement remains unchanged by the later statutory requirements set forth in the NAHA or the 1992 Act.

Neither the interim rule nor this final rule changes the requirement that the tenants of the project affected and any tenant organizations for the project or on a PHA-wide basis must be consulted in the developmental stage of the PHA's proposal, with fair notice and opportunity to submit comments and recommendations, including any recommendations for alternative strategies. While the PHA retains the authority to make the final decision whether to submit a demolition or disposition proposal, "consultation" implies a requirement for the PHA to give full and serious consideration to tenant comments and recommendations *before* making a decision. Where a building, or group of buildings, at the development is vacant, the PHA is responsible for consulting with any remaining residents or resident organizations, as well as any PHA-wide resident organizations. If the development is totally vacant, the PHA is still responsible for consulting with PHA-wide resident organizations on the issue of whether to demolish or dispose of the property.

Recognizing the variety of local circumstances in a program that encompasses PHAs of different sizes in many different kinds of communities throughout a diverse country, the regulation allows flexibility as to the exact methods that may be employed to satisfy the tenant consultation requirements, provided that there is genuine compliance with the essential elements stated in § 970.4(a).

Note: Section 412(a) of NAHA, as amended by the 1992 Act, amended section 18 of the U.S. Housing Act of 1937, to require that tenant councils, resident management