corporation, and tenant cooperative, of the project or portion of the project covered by the application, if any, be given appropriate opportunities to purchase the project or portion of the project covered by the demolition or disposition application. Therefore, a separate **Federal Register** document was published in the **Federal** Register on October 6, 1992, at 57 FR 46074, that sets forth the procedures and requirements for affording the opportunity to purchase to tenant councils, resident management corporations, or tenant cooperatives. This document was open to public comment and is being made final by this rule. Further discussion of this document (and the public comments received on it) is set forth later in this preamble. The requirements of section 412(a) are separate and distinct from the tenant consultation requirements discussed immediately above.

## **Relocation Assistance**

Two commenters recommended that § 970.5 be amended to make it clear that, when offering a displaced tenant the choice of using a Section 8 rental voucher or rental certificate, the PHA must inform the tenant that rent due to the owner under the lease following relocation may exceed the Section 8 fair market rent. The Department has included language to clarify its policy. The Department has determined that rental vouchers may be an acceptable relocation housing resource, provided the PHA ensures that referrals are made to units where the monthly amount the family must pay to the owner to cover the family's portion of the rent due to the owner will not exceed the amount determined in accordance with 24 CFR 813.107. (See § 970.5(b)). Such referral may be to other public housing units or units made affordable with a Section 8 rental certificate or voucher. If the PHA provides referrals to suitable/ comparable relocation housing (comparable housing when the displacement is subject to the URA) and a tenant with a rental voucher elects to rent a housing unit with a rent to owner that exceeds the voucher payment standard as determined by the Housing Voucher program, the tenant will be responsible for the difference between the voucher payment standard and the rent to owner. Furthermore, § 970.5(e)(2) requires the PHA to provide "counseling and advisory services to assure that full choices and real opportunities exist for tenants displaced \*.'' That language, which remains unchanged from the old regulation, requires the PHA to give displaced tenants full and fair information about all relocation options, including use of rental vouchers where that option is available. As in all other matters, this implies a duty of good faith and

diligence on the part of the PHA. There is no evidence to support the commenters' assertions that "tenants will only select rental vouchers if they are presented (or pushed) by the PHA as the only alternative".

A more complete discussion of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requirements is set forth later in this preamble.

One commenter objected to the statement that tenants become eligible for relocation assistance as of the date of receipt of official notice to move, asserting that tenants sometimes vacate before official notice as a result of PHA pressure or reduction of services. This commenter recommended that tenants be entitled to relocation benefits at any time if the PHA is encouraging tenants to move or fails to maintain the property. The commenter is referred to the definition of "displaced person" under § 970.5(i) and the definition of ''initiation of negotiations'' under § 970.5(k) to determine eligibility for relocation assistance. A person becomes eligible for relocation assistance when HUD approves the demolition or disposition under this part. Also, a person forced to vacate the property by an action associated with the planned demolition or disposition of the property, may qualify as a "displaced person" who is eligible for relocation assistance, even if the action occurs before HUD approval of the demolition or disposition. A person who is dissatisfied with the PHA's determination of eligibility may appeal to HUD under § 970.5(g). If HUD determines that the PHA's action resulted from the demolition or disposition of the property, the PHA would be required to provide the appropriate relocation assistance.

**Note:** If the PHA's action was found to be an "action to demolish or dispose of" the property under § 970.12, then the PHA would be required to cease those actions (e.g., stop vacating a development). If tenants believe that the PHA's actions are contrary to its lease obligations, they may pursue the remedies available to them under the lease.

## Actual Availability of Replacement Housing

One commenter expressed concern over the fact that HUD cannot approve demolition or disposition until there is a commitment of funds for the necessary replacement units, and recommended that HUD propose to Congress options for PHAs that "desperately need to get rid of units but for which no funds are immediately available". The commenter also suggested that Congress be updated regularly on the yearly needs and costs

for pending and approved demolition projects, so that adequate funding may be appropriated.

The commenter's concern that the Department cannot approve applications for demolition or disposition until the funds are committed is unfounded. The Department processes requests for demolition or disposition under section 18. However, under section 18, applications are approved *subject to* the availability of funds for replacement housing. As a point of clarification, section 513 of the National Affordable Housing Act of 1990 requires the Department to report to Congress each year on its replacement housing needs

beginning in FY 1992.

One commenter recommended a requirement that the replacement housing be available for occupancy before the demolition or disposition is carried out. This recommendation has not been incorporated into the final rule, which conditions HUD approval and PHA action on commitment of funds for the replacement units, rather than availability of the units for occupancy. Once the decision has been properly approved, requiring that the actual demolition or disposition be delayed until replacement units are available for occupancy would be unwarranted. The old units may be a blight on the neighborhood, vacant and substandard, and perhaps a threat to public health and safety or a financial drain on the PHA. In some cases, selective demolition may be an essential part of a comprehensive modernization plan. One of the disposition criteria was developed in contemplation of the kind of case where the existing property will be sold to obtain funds to finance the replacement units. Where the replacement units are to be produced by new construction, several years will probably be required before the new units will be available for occupancy. The commenter's recommendation may reflect the misconception that replacement units are always needed for relocation. However, past experience indicates that replacement units do not normally serve as the source for relocation of the affected residents. The affected residents are usually relocated to other units within the PHA's inventory or provided with Section 8 assistance. There is no statutory or regulatory requirement that the relocated residents be placed in the replacement housing.

## This Final Rule

In addition to the regulatory amendments being made as a result of the public comments discussed above,