

accommodates this clarification in the new § 970.13.

Section 418 of NAHA permitted the Department to establish by notice the requirements necessary to carry out this provision. Therefore, the Department published a notice of guidelines on October 6, 1992, at 57 FR 46075 and solicited public comments on the provisions set forth in that notice. The Department received public comments from five organizations: Two large national associations, one housing finance corporation, one public school system, and a HUD field office. Below is a listing of the issues raised by the commenters. Each issue is followed by a discussion of the Department's resolution of the issue.

*Comment:* There should be a distinction provided between real property that is developed with dwelling units and is occupied and real property that is vacant and abandoned (which should be excluded from the section 412(a) requirements. [a public school system]

*Response:* Section 412(a) does not apply in the case of totally vacant or abandoned development. There would be no residents to organize and, consequently, no organization to receive the offer. However, if the development is only partially vacant, the PHA is required to offer the property under application to the existing resident group, or where no group exists, the PHA must make a reasonable effort to allow the residents of the affected development to organize. The PHA has the same responsibility where only a building, or group of buildings, is vacant within the development.

*Comment:* There is no rationale for limiting the area of land to be acquired by a public body to less than two acres. [a public school system]

*Response:* On the basis of experiences in the program, the limitation of two acres was selected to reduce the possibility of injustice from profit-motivated actions. However, the Department's experience is rather limited. The threshold was established based upon experience for the last six years. It is inappropriate to allow more flexibility in this area without (1) more time to see the impact of the existing provision, and (2) a better understanding of the number of PHAs affected by the provision.

*Comment:* Financial capabilities of resident councils, resident management corporations, resident cooperatives or other similar legal instrumentalities should be assessed independent of possible future Federal grants, because such organizations may flounder when

these resources are gone. [a public school system]

If the units being sold will continue as rental units, the plan for the use of the property should include financial operations/solvency of the development. [a HUD field office]

*Response:* The long-term financial capability of a possible resident group as a purchaser should be considered by the PHA when it reviews the group's proposal. Absent any prior experience under the new resident purchase requirement, the Department sees no reason to require the PHA to give more weight to one factor over another.

*Comment:* The guidelines should include realistic but firm timetables for plan implementation which should be enforced. [a public school system]

*Response:* The requirements related to providing resident organizations the opportunity to organize are very new. To date only one resident organization has prepared a proposal for PHA consideration. Based on this experience, there is no reason to require strict timetables.

*Comment:* Another case, regarding applicability, which does not present an appropriate opportunity for resident purchase is when the housing authority plans to redevelop the real estate with replacement public housing. [a housing finance corporation]

*Response:* The PHA is required to consult with residents and resident organizations under § 970.4 regarding any proposals to demolish or dispose of any property. This consultation should include advisements of any PHA plans to reuse the property and a complete discussion of any replacement housing plans. It is clear that Congress wanted resident organizations to be given the opportunity to purchase the property.

*Comment:* It is an incorrect interpretation that is a violation of the statute to afford notice and opportunity to purchase to city-wide resident groups or, in the case where there is no organized resident group at the affected project, to allow 45 days for a resident organization to be formed. A process that is already lengthy is made more protracted and burdensome by the time periods created by the Department. The statutory reference to tenant groups, "if any," refers to groups already in existence. [two national associations]

HUD cannot avoid the cost/benefit analysis of Executive Order 12291, by designating the document as a guideline. No cost/benefit analysis or regulatory review was performed prior to the issuance of the notice. The benefits of imposing a "notice" do not outweigh the cost to PHAs as a result of the long delays and increased liabilities

they will have to face before being permitted to submit an application. A PHA is permitted to demolish or sell only its very worst projects which are often extremely unsafe. [one national association]

*Response:* The Department has examined the notice and the process for permitting resident organizations to form and recognizes that the additional time periods may be burdensome. However, the Department still believes that as a matter of policy, residents should have the opportunity to form a resident organization. In response to the concerns raised by the commenter, however, this rule abbreviates the process considerably. The process can be further truncated into the already established requirement for tenant consultation under 24 CFR 970.4(a). Therefore, where the affected development does not have an existing resident council, resident management corporation or resident cooperative at the time of the PHA proposal to demolish or dispose of the development or a portion of the development, the PHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of "reasonable effort" at a minimum include at least one of the following activities: Convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. The Department will not approve any application that cannot demonstrate that the PHA has allowed at least 45 days for the residents to organize a resident organization. The PHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under 24 CFR 970.4(a).

While the Department is concerned about the costs and the benefits as they relate to the PHAs, the Department also has similar regard and concerns for the residents who are also beneficiaries of the public housing program. Therefore, we believe that giving residents the opportunity to purchase projects that the PHA has deemed unusable for public housing purposes could benefit the residents both socially and economically. Furthermore, under Executive Order 12866 (which replaced Executive Order 12291), only "significant regulatory actions" are required to have an assessment of the costs and benefits of the action prior to promulgation. This final rule does not