

or disposed. The plan must include any one or combination of the following:

(1) The acquisition or development of additional public housing dwelling units;

(2) The use of 15-year project-based assistance under section 8, to the extent available, or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under section 8 having a term of not less than 5 years;

(3) The use of not less than 15-year project-based assistance under other Federal programs, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under other Federal programs having a term of not less than 5 years. (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 low-income 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 (12 U.S.C. 1701 *et seq.*), or Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or other similar Federal program, are not eligible as replacement housing under paragraph (a)(3) of this section.);

(4) The acquisition or development of dwelling units assisted under a State or local government program that provides for project-based rental assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under section (8)(b)(1) of the Act; or

(5)(i) The use of 15-year tenant-based assistance under section 8 of the Act, (excluding rental vouchers under section 8(o)), under the conditions described in paragraph (b) of this section, to the extent available, or if such assistance is not available, in the

case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of tenant-based assistance under section 8 (excluding rental vouchers under section 8(o)) having a term of not less than 5 years.

(ii) 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. The requirements of § 970.11(b) do not apply to applications for demolition or disposition of 200 or more units that propose the use of tenant-based assistance under section 8 having a term of not less than 5 years for the replacement of not more than 50 percent of the units to be demolished or disposed of.

(b) *Conditions for use of tenant-based assistance.* Fifteen-year tenant-based assistance under section 8 may be approved under the replacement plan only if provisions listed in paragraphs (b)(1) through (3) of this section are met.

(1) There is a finding by HUD that replacement with project-based assistance (including public housing, as well as other types of project-based assistance under paragraph (a) of this section) is not feasible under the feasibility standards established for project-based assistance; that the supply of private rental housing actually available to those who would receive tenant-based assistance under the plan is sufficient for the total number of rental certificates and rental vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full 15-year term of the assistance;

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which must include rates of participation by landlords in the Section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing housing meeting the Section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for public housing or housing assistance under Section 8; the extent of

discrimination practiced against the types of individuals or families to be served by the assistance; an assessment of compliance with civil rights laws and related program requirements; and such additional data as HUD may determine to be relevant in particular circumstances; and

(3) To justify a finding under paragraph (b)(1) of this section, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions for tenant-based assistance will be met, based on the pertinent data from the local housing market, as prescribed in paragraph (b)(2) of this section. The determination as to the lack of feasibility of project-based assistance must be based on the standards for feasibility stated in the respective regulations which govern each type of eligible project-based program identified in paragraph (a) of this section, including public housing under paragraph (a)(1) of this section as well as the other types of eligible Federal, State and local programs of project-based assistance under paragraphs (a)(2) through (4) of this section. A finding of lack of feasibility may thus be made only if the applicable feasibility standards cannot be met under any of those project-based programs, or any combination of them. For example, with regard to additional public housing development, feasibility would be determined by reference to part 941 of this chapter and any other applicable regulations and requirements, to include consideration of such factors as local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies. With regard to Section 8 programs involving rehabilitation, an example of a major feasibility factor would be the prospects for participation of private owners willing to meet the rehabilitation requirements.

(c) *Approval of unit of general local government.* The plan must be approved by the unit of general local government in which the project proposed for demolition or disposition is located, which approval shall be provided by the chief executive officer (e.g., the mayor or the county executive).

(d) *Schedule for replacement housing plan.* (1) The plan must include a schedule for carrying out all its terms within a period consistent with the size of the proposed demolition or disposition, except that the schedule for completing the plan shall in no event exceed 6 years from the date specified