

## Memorandum

To: Clients

From: Reno & Cavanaugh, PLLC

Date: November 6, 2006

**RE: Release of Final Rule on Demolition or Disposition of Public Housing Projects**

---

On Tuesday, October 24, 2006 the final rule for 24 CFR Part 970 regarding the demolition or disposition of public housing projects was published in the Federal Register. This final rule follows a December 15, 2004 proposed rule and comment period. It codifies procedures the Department originally implemented by notice to conform to statutory changes in the Quality Housing and Work Responsibility Act of 1998 and introduces some changes from current practice.

We are pleased to announce that the final rule has been much improved and incorporates many of the comments and suggested made by Reno & Cavanaugh, PLLC on behalf of our clients. This memo serves as an overview of the highlights of the final rule, which will become effective on November 24, 2006.

**1. Mixed Finance Projects Not Covered by Part 970 (HUD approval still required)**

The final rule has been clarified to exclude from Part 970 all demolition or disposition of public housing property as part of mixed finance development. The proposed rule made exemptions of mixed-finance projects contingent on the date of funding availability (DOFA), which would have subjected many mixed-finance projects to Part 970. By removing references to DOFA and changing “project” and “units” to the broader “property” in the text of 970.3(b)(11) and (12), the Department has ensured that any and all demolitions and dispositions of public housing property in preparation or as part of a mixed-finance redevelopment project will be excluded from this rule. *All demolition and disposition applications will be reviewed and approved through the mixed-finance approval process.*

**2. Final Rule covers Section 24/9 Homeownership Programs, Excludes Section 32**

Despite exempting homeownership programs under Section 32 and the former Section 5(h), Section 24/9 homeownership programs are still subjected to this Part 970. The Department articulated that the proposed rule exempts only homeownership

programs with statutory basis for exemption from Section 18, such as Section 5(h) and Section 32.

### **3. Independent Appraisals Required for Dispositions Not for Commensurate Public Benefit**

Current practice allows that when PHAs are disposing of property for a nominal value, an appraisal is not required. The commentary accompanying the release of the final rule supported this practice, and indicated that the Department will not require appraisals for dispositions based on commensurate public benefit. However, the final rule does not explicitly recognize this practice. Instead, an independent appraisal will be necessary unless another method of valuation is “clearly sufficient or the expense of an independent appraisal is unjustified...” While the language does seem to allow for exempting certain disposals from the appraisal requirement, the default will require that independent appraisals be performed.

### **4. Other Elements of QWHRA Now Formally Implemented**

- ▶ One-for-one replacement not required
- ▶ “De minimis exception” – no approval needed to demolish, over a five year period, the lesser of 5 units or 5% of the PHA’s public housing units
- ▶ Secretary can waive requirement to apply sales proceeds to HUD-held debt
- ▶ Proposed action must be specifically authorized in PHA Plan
- ▶ For demolitions, PHA need not offer project to residents
- ▶ HOPE VI demolition requests are approved by HOPE VI grant managers
- ▶ PHA must consult with residents for both demolitions and dispositions
- ▶ Relocation conducted in accordance with Part 970, not Uniform Relocation Act

You may find the Final Rule and commentary in the Federal Register at <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-17724.pdf>.

*This memorandum provides general legal advice and should not be viewed as specific legal advice. You should not act upon this information without professional counsel. For more information on this issue or affordable housing and community development generally, contact the Reno & Cavanaugh attorney below or via email or at (202) 783-2800.*

Julie McGovern, Member  
Sarah Molseed, Associate

[jmcgovern@renocavanaugh.com](mailto:jmcgovern@renocavanaugh.com)  
[smolseed@renocavanaugh.com](mailto:smolseed@renocavanaugh.com)