

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 906**

[Docket No. FR-4504-P-01]

RIN 2577-AC15

Public Housing Homeownership Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth the requirements and procedures governing a new statutory homeownership program to be administered by public housing agencies (PHAs). Under this rule, a PHA makes public housing dwelling units, public housing projects, and other housing projects available for purchase by low-income families as their principal residences.

DATES: *Comments Due Date:* Comments on the proposed rule are due on or before November 15, 1999.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David Sowell, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4138, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 401-8812, ext. 4641 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 536 of the Quality Housing and Work Responsibility Act of 1998 (Title V of Public Law 105-276, 112 Stat. 2461, approved October 21, 1998) ("Public Housing Reform Act") amended Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) by adding a new section 32, which authorized a new public housing homeownership program. The new

homeownership program replaces the public housing agency homeownership program that was authorized under section 5(h) of the 1937 Act. Section 518 of the Public Housing Reform Act repealed the 5(h) homeownership program, and section 566 of the Public Housing Reform Act added a new section 5(h) that deals with audit requirements.

This rule would revise 24 CFR part 906, which currently contains the regulations for the 5(h) homeownership program. Many of the 5(h) program requirements would be retained under the new section 32 (of the 1937 Act) homeownership program. The authorizing statutory language for the 5(h) program was very brief, and the regulatory requirements at part 906 substantially fleshed out the program. Section 32, which provides many more explicit statutory requirements than section 5(h) did, adopted several of the regulatory requirements promulgated at part 906 for the 5(h) program. For example, section 32 addresses the protection of nonpurchasing residents and the use of the proceeds from a sale. Similar provisions were provided in the 5(h) regulation. In addition, the 5(h) regulation permitted sales to residents through another entity, rather than directly from the PHA, and section 32 permits sales directly to residents or to another entity for resale to residents.

There is legislative history that indicates the similarities between the new, statutory section 32 program requirements and the section 5(h) program requirements at part 906 are deliberate. In reporting out S. 462, a bill entitled, "The Public Housing Reform and Responsibility Act of 1997", which was the model for the Public Housing Reform Act, the Senate Committee on Banking, Housing, and Urban Affairs stated: "The Committee patterned the new homeownership provision according to the section 5(h) program which has proven to be a highly successful program for assisting public housing residents in becoming homeowners." (S. Rept. 105-21, at 28). This statement supports the retention of the 5(h) program requirements that HUD is proposing in this rulemaking.

Part 906 is reorganized by this rule into five subparts according to the subjects covered: a general statement of the program; basic program requirements; purchaser requirements; program administration; and program submission and approval. The new statutory homeownership requirements are integrated with the 5(h) requirements that HUD has determined are appropriate to retain, such as proposed § 906.39, which is based upon

§ 906.20 of the 5(h) rule and covers what must be contained in a homeownership program.

In order to make the new program more flexible than the 5(h) program, we have omitted some of the 5(h) program requirements, including the detailed eligibility and affordability requirements for purchasers found in § 906.8, the nonroutine maintenance reserve requirement of § 906.11, and the purchase price and financing provisions of § 906.12. We specifically invite comments on whether HUD should specify underwriting standards or the types of documents to be used to secure that HUD's investment in a property ultimately serves program purposes.

Section 32 gives a right of first refusal to the resident or residents occupying a public housing unit. The statute does not give that right to residents of other housing that is to be sold under the homeownership program. Section 906.13 implements this right of first refusal, noting that a prospective purchaser still must satisfy other program requirements.

Section 32 provides for three categories of eligible purchasers: (1) Low-income families assisted by a PHA; (2) other low-income families; and (3) entities formed to purchase units for resale to low-income families. This rule clarifies, at § 906.15, that a family purchasing a property under a PHA homeownership program must be a low-income family, as defined in section 3 of the 1937 Act, at the time the contract to purchase the property is executed. This provision eliminates the need to re-establish eligibility at the time of closing, and places no limitations on a family's future income as a condition of homeownership.

Please note that the low-income eligibility requirement applies to public housing residents, thereby making public housing residents who earn more than 80 percent of area median income ineligible to participate in the homeownership program. The Department welcomes comment on this eligibility requirement.

Section 32 also includes provisions for the protection of nonpurchasing public housing residents. One of these provisions requires that each public housing resident displaced by the sale of a unit will be offered comparable housing that is located in an area that is generally not less desirable than the location of the displaced resident's housing. (Relocation of residents of other housing that would be displaced by a homeownership program would be covered by the Uniform Relocation Act and part 42 of this title, as stated in § 906.24.) In a Senate colloquy before

passage of the Public Housing Reform Act, Senator Mack directly addressed this provision, and the way in which it was to be interpreted. The Senator stated:

For purposes of this provision, the phrase "location of the displaced resident's housing" may be construed to mean the public housing development from which the family was vacated, rather than a larger geographic area. (Congressional Record of October 8, 1998, S.11840)

Consistent with this guidance, this proposed rule provides, in § 906.24, which deals with protections available to nonpurchasing residents, that "comparable housing" means housing that (among other factors) is located in an area that is generally not less desirable than the displaced resident's original development.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides the parameters for the use of public housing properties to create homeownership opportunities for low-

income residents of public housing and other low-income families should a public housing agency choose to do so with, at most, an incidental effect on small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. This finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule's major effects would be on individuals; any

involvement of States or their political subdivisions is limited to their cooperative efforts in promoting homeownership among public and housing residents and other low-income families.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule, as described in §§ 906.17, 906.19, 906.23, 906.27, 906.33, 906.39, 906.41, and 906.49 have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

REPORTING AND RECORDKEEPING BURDEN

| Section reference | Number of parties | Annual freq. of requirement | Est. avg. time for requirement (hours) | Est. annual burden (hrs.) |
|--|-------------------|-----------------------------|--|---------------------------|
| 906.17 | 5,000 | 1 | 4 | 20,000 |
| 906.19 | 30 | 1 | 40 | 1,200 |
| 906.23 | 2,000 | 1 | 1 | 2,000 |
| 906.27 | 50 | 1 | .50 | 25 |
| 906.33 | 50 | 1 | 10 | 500 |
| 906.39 | 50 | 1 | 40 | 2,000 |
| 906.41 | 50 | 1 | 20 | 1,000 |
| 906.49 | 50 | 1 | .25 | 12 |
| Total Reporting and Recordkeeping Burden (Hours) | | | | 25,737 |

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must

refer to the proposal by name and docket number (FR-4504) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503
and

Millie Hamman, Reports Liaison Officer,
Office of the Assistant Secretary for
Public and Indian Housing,
Department of Housing & Urban
Development, 451—7th Street, SW,
Room 4238, Washington, DC 20410

List of Subjects in 24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to revise part 906 of title 24 to read as follows:

PART 906—PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS**Subpart A—General**

Sec.

906.1 What is the purpose of this part?

906.3 What requirements are applicable to homeownership programs previously approved by HUD?

Subpart B—Basic Program Requirements

906.5 What dwelling units and what types of assistance may a PHA make available under a homeownership program under this part?

906.7 What physical requirements must a property offered for sale meet?

906.9 What effect do existing restrictions and encumbrances have on the sale of a property?

Subpart C—Purchaser Requirements

906.11 Who is eligible to purchase housing under a homeownership program?

906.13 Do current residents have a right of first refusal on units made available for sale?

906.15 What requirements apply to a family purchasing a property under a homeownership program?

906.17 How does a family apply to purchase a unit under a homeownership program?

906.19 What requirements apply to a PRE (purchase and resale entity), an entity formed for the purpose of purchasing units for resale to low-income families?

Subpart D—Program Administration

906.23 What protections are available to nonpurchasing public housing residents?

906.24 What protections are available to nonpurchasing residents of housing other than public housing?

906.25 What ownership interest is conveyed to a purchaser?

906.27 What limitations apply to net proceeds on the sale of a property acquired through a homeownership program?

906.31 What requirements are applicable to net proceeds?

906.33 What reporting and recordkeeping requirements apply to homeownership programs?

906.35 Are the disposition provisions of section 18 of the United States Housing Act of 1937 applicable to a homeownership program?

906.37 What Davis-Bacon and HUD wage rate requirements apply to homeownership programs?

Subpart E—Program Submission and Approval

906.38 Does a PHA require HUD approval to implement a homeownership program under this part?

906.39 What must a homeownership program include?

906.40 What requirements apply to acquisition of non-public housing?

906.41 What supporting documentation must be submitted to HUD with the homeownership program?

906.43 Where does a PHA submit a homeownership program for HUD approval?

906.45 What criteria will HUD use to review a homeownership program?

906.47 What environmental provisions apply?

906.49 How is HUD approval and authorization indicated?

Authority: 42 U.S.C. 14372–4 and 3535(d).

Subpart A—General**§ 906.1 What is the purpose of this part?**

(a) This part sets forth the requirements and procedures governing public housing homeownership programs carried out by public housing agencies (PHAs), as authorized by (42 U.S.C. 1437z–4) section 32 of the United States Housing Act of 1937 (“1937 Act”). A PHA may only transfer public housing units for homeownership under a homeownership program approved by HUD under this part, except as provided under § 906.3.

(b) Under a public housing homeownership program, a PHA makes available for purchase by low-income families for use as their principal residences public housing dwelling units, public housing projects, and other housing units or projects owned, assisted, or operated, or otherwise acquired by the PHA for sale under a homeownership program in connection with the use of assistance provided under the 1937 Act (“1937 Act funds”). A PHA may sell all or a portion of a property for purposes of homeownership in accordance with a HUD-approved homeownership program, and in accordance with the PHA’s annual plan under part 903 of this title.

§ 906.3 What requirements are applicable to homeownership programs previously approved by HUD?

(a) Any existing section 5(h) or Turnkey III homeownership program continues to be governed by the requirements of part 906 or part 904 of this title, respectively, as it existed before [effective date of *Homeownership Program final rule*] (contained in the April 1, 1999 edition of 24 CFR, parts 700 to 1699). The use of other program income for homeownership activities

continues to be governed by agreements executed with HUD.

(b) A PHA may convert an existing homeownership program to a homeownership program under this part with HUD approval.

Subpart B—Basic Program Requirements**§ 906.5 What dwelling units and what types of assistance may a PHA make available under a homeownership program under this part?**

(a) A homeownership program under this part may provide for sale of:

(1) Units that are public housing units; and

(2) Other units owned, operated, assisted, or acquired for homeownership sale that have received the benefit of 1937 Act funds or are to be sold with the benefit of 1937 Act funds (“non-public housing units”).

(b) A homeownership program under this part may provide for financing to eligible families (see § 905.15) purchasing dwelling units under the program, or for acquisition of housing units or projects by the PHA for sale under the program.

(1) Under this part, a PHA may use assistance from amounts it receives under the Capital Fund under section 9(d) of the 1937 Act or from other income earned from its 1937 Act programs to provide financing assistance to public housing residents only. Public housing residents may use such assistance to purchase the unit in which they reside, another public housing unit, or a residence not located in a public housing development.

(2) A PHA may provide financing assistance for other eligible purchasers from other income, i.e., income not from 1937 Act programs, such as proceeds from selling public housing units, loan repayments, and public housing debt forgiveness funding not already committed to another purpose.

(c) A PHA must not use 1937 Act funds to rehabilitate units that are not public housing units.

§ 906.7 What physical requirements must a property offered for sale meet?

A property offered for sale under a homeownership program must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under part 35, subpart C of this title. When a prospective purchaser

with disabilities requests accessible features, the features must be added in accordance with part 8 of this title. Further, the property must be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. These standards must be met as a condition for conveyance of a dwelling to an individual purchaser.

§ 906.9 What effect do existing restrictions and encumbrances have on the sale of a property?

(a) If the property is subject to indebtedness under the Annual Contributions Contract (ACC), HUD will continue to make any debt service contributions for which it is obligated under the ACC, and the property sold will not be subject to the encumbrance of that indebtedness.

(b) Upon sale of a public housing unit, in accordance with the HUD-approved homeownership program, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for public housing Operating Fund or Capital Fund payments.

Subpart C—Purchaser Requirements

§ 906.11 Who is eligible to purchase housing under a homeownership program?

Low-income families and entities that purchase units from the PHA for resale to low-income families ("purchase and resale entities" or PREs) are eligible to purchase properties made available for sale under a PHA homeownership program.

§ 906.13 Do current residents have a right of first refusal on units made available for sale?

(a) Yes, in selling a public housing unit under a homeownership program, the PHA must initially offer the unit to the resident occupying the unit, if any, or to an organization serving as a conduit for sales to any such resident. (See § 906.19.) The resident must qualify to purchase the unit under the requirements specified by the PHA, in accordance with § 906.15.

(b) No, this program does not require the PHA, when selling a unit that is a non-public housing unit, to offer the unit for sale first to the current resident under the program.

§ 906.15 What requirements apply to a family purchasing a property under a homeownership program?

(a) *Low-income requirement.* A family purchasing a property under a PHA

homeownership program must be a low-income family, as defined in section 3 of the 1937 Act (42 U.S.C. 1437a), at the time the contract to purchase the property is executed.

(b) *Principal residence requirement.* The dwelling unit sold to an eligible family must be used as the principal residence of the family.

(c) *Financial capacity requirement.* Eligibility must be limited to families who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of public housing operating subsidies and modernization funds after conveyance of the property by the PHA. A homeownership program may, however, take account of any available subsidy from other sources.

(d) *Down payment requirement.* (1) Each family purchasing housing under a homeownership program must provide a downpayment in connection with any loan for acquisition of the housing, in an amount determined by the PHA or PRE, in accordance with an approved homeownership program. Except as provided in paragraph (d)(2) of this section, the PHA or PRE must permit the family to use grant amounts, gifts from relatives, contributions from private sources, and other similar amounts in making the downpayment.

(2) The family must use its own resources other than grants, gifts, contributions, or similar amounts, to contribute an amount of the downpayment that is not less than one percent of the purchase price of the housing. The PHA or PRE must take reasonable steps, and maintain records, that are verifiable by HUD through audits to verify the source of this one percent contribution.

(e) *Other requirements established by the PHA.* A PHA may establish requirements or limitations for families to purchase housing under a homeownership program, including requirements or limitations regarding:

- (1) Employment or participation in employment counseling or training activities;
- (2) Criminal activity;
- (3) Participation in homeownership counseling programs;
- (4) Evidence of regular income; and
- (5) Other requirements.

§ 906.17 How does a family apply to purchase a unit under a homeownership program?

Families who are interested in purchasing a unit must submit applications to the PHA or PRE for that specific purpose, and those applications must be handled separately from

applications for other PHA programs. Application for homeownership must not affect an applicant's place on any other PHA waiting list for rental units.

§ 906.19 What requirements apply to a PRE (purchase and resale entity), an entity formed for the purpose of purchasing units for resale to low-income families?

(a) *In general.* In the case of a purchase of units for resale to low-income families by a PRE, the PHA must have an approved homeownership program that describes the use of a PRE to sell the units to low-income families within 5 years from the date of the PRE's acquisition of the units.

(b) *PRE requirements.* The PHA must demonstrate in its homeownership program that the PRE has the necessary legal capacity and practical capability to carry out its responsibilities under the program. The PHA's homeownership program also must contain a written agreement that specifies the respective rights and obligations of the PHA and the PRE and which include:

(1) Assurances that the PRE will comply with all provisions of the HUD-approved homeownership program;

(2) Assurances that the PRE will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible families, in accordance with the HUD-approved homeownership program, or by reconveyance to the PHA, and that the property will not be encumbered by the PRE without the written consent of the PHA;

(3) Protection against fraud or misuse of funds or other property on the part of the PRE, its employees, and agents;

(4) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership program;

(5) Limitation of the PRE's administrative and overhead costs, and of any compensation or profit that may be realized by the PRE, to amounts that are reasonable in relation to its responsibilities and risks;

(6) Accountability to the PHA and residents for the recordkeeping, reporting and audit requirements of § 906.33;

(7) Assurances that the PRE will administer its responsibilities under the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act and implementing regulations; and

(8) Adequate legal remedies for the PHA and residents, in the event of the PRE's failure to perform in accordance with the agreement.

(c) *Sale to low-income families.* The requirement for a PRE to sell units

under a homeownership program only to low-income families must be recorded as a deed restriction at the time of purchase by the PRE.

(d) *Resale within five years.* A PRE must agree that, with respect to any units it acquires under a homeownership program under this part, it will transfer ownership to the PHA if the PRE fails to resell the unit to a low-income family within 5 years of the PRE's acquisition of the unit.

(e) *Required notices to families.* A PRE must provide the notices to purchasing families that are required by the PHA, in accordance with the environmental and other requirements referenced in § 906.47.

Subpart D—Program Administration

§ 906.23 What protections are available to nonpurchasing public housing residents?

(a) If a public housing resident does not exercise the right of first refusal under § 906.13, the PHA:

(1) Must notify the resident residing in the unit 90 days prior to the displacement date, except in cases of imminent threat to health or safety, that:

(i) The public housing unit will be sold;

(ii) The transfer of possession of the unit will not occur until the resident is relocated; and

(iii) Each resident displaced by such action will be offered comparable housing (as defined in paragraph (b) of this section);

(2) Must provide for the payment of the actual costs and reasonable relocation expenses of the resident to be displaced;

(3) Must ensure that the resident is offered comparable housing under paragraph (a)(1)(iii) of this section;

(4) Must provide counseling for displaced residents of their rights to comparable housing, including their rights under the Fair Housing Act to choice of a unit on a nondiscriminatory basis, without regard to race, color, religion, national origin, disability, age, sex, or familial status; and

(5) Must not transfer possession of the unit until the resident is relocated.

(b) For purposes of this section, the term "comparable housing" means housing:

(1) That meets housing quality standards;

(2) That is located in an area that is generally not less desirable than the displaced resident's original development; and

(3) Which may include:

(i) Tenant-based assistance (tenant-based assistance must only be provided upon the relocation of the resident to the comparable housing);

(ii) Project-based assistance; or

(iii) Occupancy in a unit owned, operated, or assisted by the PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is vacated.

§ 906.24 What protections are available to nonpurchasing residents of housing other than public housing?

Residents of non-public housing that would be displaced by a homeownership program are eligible for assistance under the Uniform Relocation Act and part 42 of this title. For purposes of this part, a family that was over-income at the time of admission to public housing and was admitted in accordance with section 3(a)(5) of the 1937 Act, is treated as a nonpurchasing resident of non-public housing.

§ 906.25 What ownership interest is conveyed to a purchaser?

A homeownership program may provide for sale to the purchasing family of any ownership interest that the PHA considers appropriate under the homeownership program, including:

(a) Ownership in fee simple;

(b) A condominium interest;

(c) An interest in a limited dividend cooperative; or

(d) A shared appreciation interest with a PHA providing financing.

§ 906.27 What limitations apply to net proceeds on the sale of a property acquired through a homeownership program?

(a) A PHA must establish such limitations (by an appropriate form of title restriction) on the resale of property acquired through a homeownership program as the PHA considers appropriate for the PHA to recapture:

(1) Some or all of the economic gain derived from any such resale (i.e., appreciation) occurring during the 5-year period beginning upon purchase of the dwelling unit by the eligible family, in addition to some or all of the assistance provided under the homeownership program to the family; and

(2) After the expiration of such 5-year period, only such amounts as are equivalent to the assistance provided under the homeownership program to the family.

(b) In establishing the limitations described in paragraph (a)(1) of this section, the PHA may consider:

(1) The aggregate amount of assistance provided under the homeownership program to the family;

(2) The contribution of equity by the purchasing family;

(3) The period of time elapsed between purchase by the homebuyer

under the homeownership program and resale by the homebuyer;

(4) The reason for resale;

(5) Any improvements made by the family purchasing under the homeownership program;

(6) Any appreciation in the value of the property; and

(7) Any other factors that the PHA considers appropriate.

(c) For the purposes of this section, the value of the property must be determined by a certified appraiser within one month before the resale.

§ 906.31 What requirements are applicable to net proceeds?

(a) *PHA use of net proceeds.* The PHA must use any net proceeds of any sales under a homeownership program remaining after payment of all costs of the sale for purposes relating to low-income housing and in accordance with the PHA plan of the PHA carrying out the program.

(b) *PRE use of resale net proceeds.* The PHA may require the PRE to return the net proceeds from the resale and from managing the units to the PHA. If the PHA permits the PRE to retain the net proceeds, the PRE must use these proceeds for low-income housing purposes.

§ 906.33 What reporting and recordkeeping requirements apply to homeownership programs?

The PHA is responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the HUD-approved homeownership program. Where a PRE is responsible for the sale of units, the PHA must ensure that the PRE's responsibilities include proper recordkeeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership program and to meet its audit responsibilities. All books and records must be subject to inspection and audit by HUD and the General Accounting Office (GAO). The PHA must report annually to HUD on the progress of each program approved under this part.

§ 906.35 Are the disposition provisions of section 18 of the United States Housing Act of 1937 applicable to a homeownership program?

The provisions of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) do not apply to disposition of public housing dwelling units under a homeownership program approved by HUD.

§ 906.37 What Davis-Bacon and HUD wage rate requirements apply to homeownership programs?

(a) *Type of activities covered.* Rehabilitation, repairs and accessibility modifications performed pursuant to § 906.7 are subject to Davis-Bacon or HUD-determined wage rate requirements when involving units that are:

(1) Public housing units that will be sold under a homeownership program; and

(2) Non-public housing units owned or acquired by a PHA with the intent to use 1937 Act funds to rehabilitate the units, finance the sale of the units, or otherwise provide assistance to purchasers of the units.

(b) *Type of workers covered.* These prevailing wage requirements cover laborers and mechanics involved in the construction work and technical workers, such as architects, technical engineers, draftsmen, and technicians. See §§ 968.110(e) and 968.105 of this title for further guidance concerning Davis-Bacon and HUD-determined wage rates.

Subpart E—Program Submission and Approval**§ 906.38 Does a PHA require HUD approval to implement a homeownership program under this part?**

A PHA must obtain HUD approval before implementing a homeownership program. A homeownership program must be carried out in accordance with the requirements of this part and the PHA's plan submitted under part 903 of this title.

§ 906.39 What must a homeownership program include?

A homeownership program must include the following matters, as applicable to the particular factual situation:

(a) *Property description.* (1) If the program involves only financing assistance to the family purchasing the unit, the PHA need not specify property addresses, but it must describe the area in which the assistance is to be used.

(2) If the PHA is selling existing public housing, it must describe the property, including identification of the property by project number, or street address if there is no project number, and the specific dwellings to be sold, with bedroom distribution by size and type broken down by project.

(3) If the PHA is acquiring units with 1937 Act funds to sell under the program, it must comply with the provisions of § 906.40 concerning this element of the program.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 906.7, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.15. If the homeownership program allows application for purchase of units by families who are not presently public housing or Section 8 residents and not already on the PHA's waiting lists for those programs, the program must include an affirmative fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach.

(d) *Sale and financing.* Terms and conditions of sale and financing.

(e) *Consultation with residents and purchasers.* A description of resident input obtained during the resident consultation process required by the PHA plan under part 903 of this title, and a plan for consultation with purchasers during the implementation stage to help insure program solvency.

(f) *Counseling.* Counseling, training, and technical assistance to be provided to purchasers.

(g) *Sale via PRE.* If the plan contemplates sale to residents by an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.19 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 906.23.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 906.31.

(j) *Administration.* An administrative plan, including estimated staffing requirements and a listing of staff positions that will be responsible for the day-to-day implementation and monitoring of the program, the percentage of time each staff member will spend on homeownership activities and the funding source for staff salaries.

(k) *Records, accounts and reports.* A description of the recordkeeping, accounting and reporting procedures to be used, including those required by § 906.33.

(l) *Budget.* A budget estimate, showing any rehabilitation or repair

cost, any financing assistance, and the costs of implementing the program, and the sources of the funds that will be used.

(m) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

§ 906.40 What requirements apply to acquisition of non-public housing?

(a) *Proposal contents.* The PHA must submit an acquisition proposal to the HUD Field Office for review and approval before its homeownership plan containing acquisition of non-public housing can be approved. This proposal must contain the following:

(1) *Project description.* A description of the housing, including the number of units, unit types and number of bedrooms, and any nondwelling facilities of the project to be acquired;

(2) *Certification.* Certification by the PHA that the property was not constructed or is not being constructed with the intent that it would be sold to the PHA;

(3) *Site information.* A description of the proposed general location of the property to be acquired, or where specific properties have been identified, street addresses of the properties;

(4) *Project costs.* The detailed budget of costs for acquiring the project, including relocation and closing costs, and an identification of the sources of funding;

(5) *Appraisal.* An appraisal of the proposed property by an independent, state-certified appraiser (when the sites have been identified);

(6) *Project acquisition schedule.* A copy of the PHA acquisition schedule;

(7) *Environmental information.* All available environmental information on the properties to be acquired (when sites have been identified), to expedite the environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or under part 50 of this title (if HUD is performing the environmental review);

(8) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine whether it can approve the proposal.

(b) *Cost limit.* The acquisition cost of the project is limited by the housing cost cap limit, as described in HUD Notice PIH 99-17, issued on March 15, 1999.

§ 906.41 What supporting documentation must be submitted to HUD with the homeownership program?

The following supporting documentation must be submitted to

HUD with the proposed homeownership program, as appropriate for the particular program:

(a) *Property value estimate.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this data is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse and of windfall profit upon resale, pursuant to § 906.27. A formal appraisal need not be submitted with the proposed homeownership program.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 906.7.

(c) *Workability.* An itemized statement demonstrating the practical workability of the program, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 906.45(a).)

(d) *PHA performance in homeownership.* A statement of the commitment and capability of the PHA (and any other entity with substantial responsibility for implementing the homeownership program) to successfully carry out the homeownership program. The statement must describe the PHA's (and other entity's) past experience in carrying out homeownership programs for low income families, and (if applicable) its reasons for considering such programs to have been successful. A PHA that has not previously implemented a homeownership program for low income families instead must submit a statement describing its experience in carrying out public housing modernization and development projects under parts 941 and 968 of this title, respectively.

(e) *Nondiscrimination certification.* The PHA's or PRE's certification that it will administer the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, and implementing regulations, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the program.

(f) *Legal opinion.* An opinion by legal counsel to the PHA, stating that counsel has reviewed the program and finds it consistent with all applicable requirements of Federal, State, and local law, including regulations as well as statutes. At a minimum, the attorney must certify that the documents to be used will fully implement the sale to a low-income family restriction of § 906.41(e), the resale reverter of § 906.41(d), and the restriction of use of resale proceeds of § 906.27.

(g) *Board resolution.* A resolution by the PHA's Board of Commissioners, evidencing its approval of the program.

(h) *Other information.* Any other information that may reasonably be required for HUD review of the program. Except for the PHA-HUD implementing agreement under § 906.49, HUD approval is not required for documents to be prepared and used by the PHA in implementing the program (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the program. Consequently, those documents need not be submitted as part of the program or the supporting documentation.

§ 906.43 Where does a PHA submit a homeownership program for HUD approval?

A PHA must submit its proposed homeownership program together with supporting documentation, in a format prescribed by HUD, to the Special Applications Center, 77 W. Jackson Street, Chicago, Illinois, with a copy to the appropriate HUD Field Office.

§ 906.45 What criteria will HUD use to review a homeownership program?

HUD will use the following criteria in reviewing a homeownership program:

(a) *Workability.* The program must be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The program must be consistent with law, including the requirements of this part and any other applicable Federal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the program, at the discretion of the PHA, whether or not expressly authorized in this part.

(c) *Documentation.* The program must be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

(d) *PHA performance in homeownership.* The PHA (and any other entity with substantial responsibility for implementing the homeownership program) must have demonstrated the commitment and capability to successfully implement the homeownership program based upon the criteria stated in 906.41(d).

§ 906.47 What environmental provisions apply?

(a) Generally, the environmental provisions applicable to HUD-financed programs are found in part 58 of this title (if a responsible entity has assumed environmental review responsibility for the project) and part 50 of this title (if HUD is performing the environmental review).

(b) Where the PHA's homeownership program involves no acquisition or rehabilitation of units in anticipation of the sale but assistance to the homebuyer will be provided with 1937 Act funds, an environmental review is not required under part 58 or part 50 of this title. However, the requirements of § 58.6 or § 50.19(b)(15) of this title are still applicable.

§ 906.49 How is HUD approval and authorization indicated?

HUD may approve a homeownership program as submitted or return it to the PHA for revision and resubmission. Upon HUD notification to the PHA that the homeownership program is approvable (in final form that satisfies all applicable requirements of this part), the PHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The program itself, as approved by HUD, must be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the PHA and HUD. The PHA is obligated to carry out the approved homeownership program and other provisions of the implementing agreement without modification, except with written approval by HUD.

Dated: August 27, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99-23700 Filed 9-13-99; 8:45 am]

BILLING CODE 4210-33-P