

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 907**

[Docket No. R-95-1704; FR-3573-F-02]

RIN 2577-AB38

Homeownership Demonstration Program in Omaha, NE

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements section 132 of the Housing and Community Development Act of 1992. Section 132 establishes a demonstration program to facilitate self-sufficiency and permits the homeownership sale of single family homes administered by the Housing Authority of the City of Omaha in the State of Nebraska. The purpose of the demonstration is to exhibit the effectiveness of promoting homeownership and providing support services.

EFFECTIVE DATE: January 20, 1995.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Homeownership Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4112, Washington, DC 20410. Telephone number, voice (202) 708-4233, TDD (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Background**

On January 24, 1994 (59 FR 3626), HUD published an interim rule implementing section 132 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved Oct. 28, 1992) (section 132). Section 132 establishes a demonstration program to facilitate self-sufficiency and to permit the homeownership sale of single family homes administered by the Housing Authority of the City of Omaha in the State of Nebraska. The purpose of the demonstration is to exhibit the effectiveness of promoting homeownership and providing support services.

The interim rule was closely modeled on the interim rule for the Section 5(h) Homeownership Program, codified in 24 CFR part 906. The Housing Authority for the City of Omaha (Housing Authority), which is administering this demonstration program, is already administering a homeownership program approved pursuant to section 5(h) of the United States Housing Act of 1937, and it has indicated to HUD that

it wishes to operate the two programs in a similar fashion. While this demonstration program and the Section 5(h) program are similar, the preamble to the interim rule described several differences (59 FR 3626).

HUD is publishing this final rule for effect immediately upon publication. Generally, in accordance with section 7(o) of the Department of Housing and Urban Development Act, HUD does not publish a rule or regulation for effect until after the expiration of the 30-day calendar period beginning on the day after the rule or regulation is published. However, because section 132(g) of the Housing and Community Development Act of 1992 provides that the final rule implementing the Homeownership Demonstration Program in Omaha, Nebraska "shall take effect upon issuance," the section 7(o) provision does not apply to this final rule.

II. Comments on the January 24, 1994 Interim Rule

HUD solicited public comments on the interim rule implementing the Homeownership Demonstration Program in Omaha, Nebraska. By the expiration of the public comment period on March 25, 1994, HUD had received two comments, one from the Housing Authority of the City of Omaha (Housing Authority), and one from the Public Housing Agency of Saint Paul, Minnesota (Saint Paul Housing Agency). The final rule contains four changes to the interim rule, as further described below, in response to public comments: (1) HUD has deleted § 907.5(b); (2) HUD has deleted the requirement in § 907.6(b) for fire and safety inspections; (3) HUD has added applicants for public housing as eligible homebuyers in § 907.8(c); and (4) HUD has revised § 907.8(d) to acknowledge that the Housing Authority may submit for HUD's approval an order of preference for participants. The following discussion summarizes the comments and provides HUD's responses to those comments.

1. The Housing Authority objected to certain sections of the interim rule that were modeled on the Section 5(h) interim regulations (codified at 24 CFR part 906), asserting that the borrowed language in those sections is inapplicable to this demonstration program. One of these sections is § 907.5(b), regarding negotiations with residents wishing to initiate a homeownership plan. The Housing Authority stated that section 132 would not exist if the Housing Authority did not already desire to implement a homeownership program.

The other section is § 907.8(d), in the last sentence regarding the order of preference for participants, which ends "in accordance with HUD approved preferences." The Housing Authority stated that this sentence may be confusing, asserting that section 132 gives the Housing Authority the right to make its own order of preference, and suggesting that the sentence would more clearly read: "* * * in accordance with preferences as established by the Housing Authority and approved by HUD."

HUD Response: HUD agrees with the Housing Authority that the first sentence of § 907.5(b) is inapposite, given that the Housing Authority has initiated the homeownership program. The remaining two sentences of § 907.5(b) encourage the Housing Authority to maximize resident participation in planning and implementing the homeownership program. While HUD continues to encourage maximum resident participation, it agrees that it does not need to include such advice in the rule and therefore has deleted § 907.5(b).

With regard to § 907.8(d), HUD does not object to a process in which the Housing Authority develops and submits to HUD an order of preference for participants, and has changed the section of the rule accordingly.

2. The Housing Authority objected to several other provisions of the interim rule, asserting that they are otherwise inappropriate for this demonstration program. The first such provision is § 907.5(a), in the third sentence regarding consultation about vacant units with resident organizations or resident management corporations. The Housing Authority remarked that such consultation every time there is a vacancy would be repetitive, since the Housing Authority would already have consulted both residents and their organizations in developing the plan. The Housing Authority further noted that this provision is unnecessary, since the Housing Authority does not intend to sell vacant units.

HUD Response: Section 907.5(a) does not require repetitive resident consultation whenever there is a vacancy. It requires that resident consultation take place during the process of developing the homeownership plan even if the plan encompasses vacant units. Once the plan is developed and approved by HUD, the rule does not require further consultation when a unit included in the homeownership program becomes vacant.

The Housing Authority also objected to the first sentence in § 907.8(c),

regarding homebuyer eligibility, as inappropriate for this demonstration program. The Housing Authority asserted that applicants for public housing, as well as residents, could be eligible to become homebuyers, and therefore that the sentence should be amended to allow such applicants to be eligible.

HUD Response: HUD agrees that applicants for public housing can also be eligible homebuyers and has modified § 907.8(c) accordingly.

Another provision that the Housing Authority regarded as inappropriate to this demonstration program is § 907.11, regarding maintenance reserves. The Housing Authority remarked that this requirement is unusual for the single family homes affected by this program, and that these reserves would not be necessary if the qualifying resident was required to have sufficient income.

HUD Response: HUD's previous experiences in overseeing low-income homeownership has demonstrated that those administering such programs must provide adequately for foreseeable future maintenance needs. Failure to take such expenses into account can lead to defaults and foreclosures because homeowners could not withstand the financial impact of such expenses. The provision in the rule gives the Housing Authority two options for handling foreseeable maintenance costs. The Housing Authority can either establish maintenance reserves or it can demonstrate that homebuyer income will be sufficient over the long term to manage the expense.

The Housing Authority also commented that several sections of the interim rule contain inappropriate references to cooperatives, condominiums, or entities as purchasers. These sections include §§ 907.7(a), 907.7(b), 907.8(c)(2), and 907.20(h). The Housing Authority stated that section 132 confines this program to single family homes, such that families, not entities, will be the purchasers.

HUD Response: The rule gives the Housing Authority flexibility to structure the terms of purchase in a number of different ways, including by means of a cooperative or a condominium. HUD understands that at this time the Housing Authority does not believe that it needs the flexibility. However, it is important to allow maximum flexibility in the future to accommodate possible changes in circumstances without resorting to a waiver or change in the regulation.

The final aspect of the interim rule that the Housing Authority found inappropriate to this demonstration

program is the reference in several sections to affirmative fair housing marketing strategies. These sections include §§ 907.7(b), 907.8(d), and 907.20(n). The Housing Authority stated that it intends to sell only to residents, and that marketing strategies should therefore only be required if it ever intends to sell units to other than its residents.

HUD Response: Implementing this demonstration program in accordance with fair housing objectives is of the utmost importance. The final rule has retained almost verbatim the civil rights related program requirements contained in the interim rule. Additionally, in response to the Housing Authority's comment above, the final rule includes as eligible homebuyers both current residents and applicants for public housing. Since HUD has changed the rule in this manner, the Housing Authority must comply with §§ 907.7(b), 907.8(d), and 907.20(n) of the rule. The affirmative fair housing marketing strategy is thus an integral part of this program, especially in view of the fact that the potential market for this program is 602 units or 20 percent of the total units administered by the Housing Authority.

3. The Housing Authority also objected to two sections of the interim rule containing language that it asserted is unnecessary to the rule. First, it objected to the parenthetical sentence in § 907.2, regarding the 20 percent ceiling. It asserted that this parenthetical is unnecessary and may lead to confusion, especially with regard to additional units developed by the Housing Authority. The Housing Authority explained that the manner in which it may have acquired any particular single family home and when it acquired that home is irrelevant. Second, it objected to the parenthetical example in the second sentence of § 907.8(c), describing sources of funds that a cooperative homeownership plan may include, claiming it is unnecessary.

HUD Response: The parenthetical language must remain to describe properly the statutory requirement that the demonstration program may be applied to not more than 20 percent of the total number of public housing units administered by the Housing Authority. The total number of public housing units administered by the Housing Authority can be expected to change over time as units are sold and as other units are added to the Housing Authority's inventory. If the 20 percent requirement were permitted to be reapplied to whatever the current number of units is at a given time, the Housing Authority would conceivably

be able to continue selling units until it reached a level at which 20 percent would no longer equal a whole unit. For example, if it began with 100 units and sold 20 percent (20 units), 80 units would remain. It could then reapply the 20 percent standard and sell 20 percent of 80 units (16 units), and then have 64 units remaining. The process would then go on until only 4 units were left and applying 20 percent would leave less than a whole unit. Clearly this was not the way that Congress contemplated the 20 percent provision to be applied. Therefore, the 20 percent should be applied once (as of the enactment date of the law, October 28, 1992) to establish a base figure. HUD calculated that 20 percent of the total units at the time of enactment was 602 units. The Housing Authority should also be able to add 20 percent of any newly acquired units that are not replacement units to the base figure as well. Newly acquired units that are replacement for units that left the Housing Authority's inventory should not be counted, since the units they are replacing were already taken into consideration in establishing the base figure of 602 units.

4. The Housing Authority objected to two provisions of the interim rule as burdensome or wasteful. First, the Housing Authority suggested that the requirement in the third sentence of § 907.6(b) for fire and safety inspections by local officials would be duplicative, since the Housing Authority will have already inspected the property several times. This requirement would be difficult, if not impossible, to fulfill, remarked the Housing Authority, since the City of Omaha does not normally conduct such inspections of existing single family homes.

HUD Response: HUD did not intend to create a burden in terms of inspections beyond that customarily imposed by the locality. HUD has therefore deleted this requirement.

Second, the Housing Authority commented that the environmental review required in § 907.18(d) would be an unwarranted expense to the taxpayer, since HUD will have already reviewed all the single family homes in the program.

HUD Response: The regulations in 24 CFR part 50 establish HUD's responsibilities in complying with several environmental requirements, including the National Environmental Policy Act (NEPA). In approving the homeownership plan, HUD must consult these regulations to determine which if any of these requirements apply. While HUD intends to perform its obligations in a rational and cost-effective manner, it cannot categorically

dispense with its environmental responsibilities.

5. The Public Housing Agency of Saint Paul, Minnesota (Saint Paul Housing Agency) suggested that instead of approving a separate homeownership demonstration program, HUD should develop various alternative programs to be approved and administered under the Section 5(h) regulations. According to the Saint Paul Housing Agency, one such alternative could be this Omaha Demonstration Program, with its mandate to affirmatively further fair housing objectives. A second such alternative could be the program that the Saint Paul Housing Agency has developed, which provides for homeownership through a lease/purchase contract with financial assistance. A third such alternative could be a program geared toward a metropolitan area and its special needs for affordable housing solutions. The Saint Paul Housing Authority remarked that by providing different variations of homeownership programs, HUD would allow housing agencies discretion to implement a program to meet local needs while staying within the Section 5(h) guidelines.

HUD Response: HUD agrees that the Section 5(h) program should accommodate many different models and has striven to preserve such flexibility in the recently published final Section 5(h) rule. HUD did not initiate the Omaha demonstration program. The primary innovation permitted by the Omaha demonstration that could not be accommodated by the existing Section 5(h) program is the wide discretion granted to the Omaha Housing Authority to select who is eligible to participate in the program. In most other respects, the Omaha Demonstration Program closely parallels the Section 5(h) program.

III. Other Matters

National Environmental Policy Act

At the time of the development of the interim rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. That Finding remains applicable to this final rule, and is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication, and by approving it certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited in scope to Omaha, Nebraska.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, or general well-being, except to the extent that the program authorized by the rule increases homeownership opportunities for low-income families in Omaha, Nebraska. Any such impact is beneficial and merits no further review under the Order.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this 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. As a result, this rule is not subject to review under the order.

Semi-Annual Agenda of Regulations

This rule was listed as sequence number 1895 in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57673) under Executive Order 12886 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 907

Low and moderate income housing. Public housing, Reporting and recordkeeping requirements.

Accordingly, the interim rule, which amended title 24 of the Code of Federal Regulations by adding a new part 907 to chapter IX, and which was published in the **Federal Register** on January 24, 1994 (59 FR 3626), is adopted as a final rule with the following changes:

PART 907—HOMEOWNERSHIP DEMONSTRATION PROGRAM

1. The authority citation for part 907 continues to read as follows:

Authority: 42 U.S.C. 3535(d); sec. 132, Pub. L. 102-550, 106 Stat. 3712-3713.

§ 907.1 [Amended]

2. Section 907.1 is amended by removing the paragraph designation and the paragraph heading for paragraph (a), and by removing paragraph (b).

§ 907.5 [Amended]

3. Section 907.5 is amended by removing the paragraph designation and the paragraph heading for paragraph (a), and by removing paragraph (b).

§ 907.6 [Amended]

4. In § 907.6, paragraph (b) is amended by removing from the middle of sentence three that begins with "The Housing Authority prior * * *", the phrase "and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials".

5. Section 907.8 is amended by revising the first sentence in the introductory text of paragraph (c), and by revising paragraph (d), to read as follows:

§ 907.8 Purchaser eligibility and selection.

* * * * *

(c) *Homebuyer eligibility.* Eligibility shall be limited to residents and applicants for public housing, 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 Housing Authority. * * *

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(d) *Procedures/Affirmative Fair Housing Marketing Strategy.* The Housing Authority must establish written equitable procedures for identifying and selecting eligible families to participate in the homeownership program. The Housing Authority must have an affirmative fair housing marketing strategy that applies whenever homeownership opportunities are made available to other than current residents of the property. Selections made from the Housing Authority's waiting list for the homeownership program must be in a nondiscriminatory manner in accordance with preferences as submitted by the Housing Authority and approved by HUD.

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Dated: January 12, 1995.

Henry G. Cisneros,
Secretary.

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