



Federal Register

**Tuesday,
March 11, 2003**

Part IV

Department of Housing and Urban Development

**24 CFR Part 906
Public Housing Homeownership Program;
Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 906

[Docket No. FR-4504-F-02]

RIN 2577-AC15

Public Housing Homeownership Program

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

ACTION: Final rule.

SUMMARY: This rule states 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 developments, and other housing units available for purchase by low-income families as their principal residences.

DATES: *Effective Date:* April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dominique Blom, 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. 4181 (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:

I. The New Section 32 Homeownership Program

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) (QHWRA) 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 authorizes a new public housing homeownership program (section 32 homeownership program). The new homeownership program replaces the public housing agency homeownership program that was authorized under section 5(h) of the 1937 Act (the 5(h) homeownership program or 5(h) program). Section 518 of the QHWRA repealed the section 5(h) homeownership program, and section 566 of the QHWRA added a new section 5(h) that deals with an unrelated matter.

II. The 5(h) Program

The regulations implementing the former 5(h) homeownership program are found at 24 CFR part 906 (April 1,

2002). The 5(h) program generally was a program, similar to the section 32 program, under which PHAs could sell public housing units subject to Annual Contributions Contract (ACC) to public housing and section 8 residents for purposes of homeownership (*see* §§ 906.2, 906.3).

The 5(h) program required submission of a homeownership plan with specified contents for HUD review and approval, including a property description, standards to be used for selection of purchasers, proposed conditions of sale, and other matters. In addition to the homeownership plan, the 5(h) program required various forms of supporting documentation.

The 5(h) program permitted "any appropriate" method of sale, but was not specific in terms of what those methods might be. As examples, the program cited fee-simple conveyance of individual dwellings, or conversion of buildings to cooperative or condominium use. The program permitted "indirect sale," that is, sale to an intermediary entity for sale to residents.

Eligible purchasers in the 5(h) program were residents of public housing, or tenants assisted under section 8 who have been lawful residents of their units for some minimum time specified in the homeownership plan, but in any case not less than 30 days prior to conveyance of title of the dwelling to be purchased. In 24 CFR 906.8(e) (April 1, 2002), the 5(h) rule established affordability standards to ensure that residents are capable of assuming the financial obligations of homeownership.

The 5(h) program required a plan for replacement of housing sold. (*See* 24 CFR 906.16 April 1, 2002.) This requirement is based on section 18 of the 1937 Act, 42 U.S.C. 1437p, as it existed prior to the effective date of the QHWRA, which required some form of replacement for every disposed unit. However, the replacement housing requirement was removed from section 18 by the QHWRA, and so is not found in this rule implementing the section 32 homeownership program.

The 5(h) program contained a number of other provisions necessary to the operation of the program, such as restrictions on resale profits to avoid windfalls, civil rights certifications, and provisions for HUD review and approval of applications to participate in the program. The proposed and final section 32 program rules retain many of these requirements and vary others, as described in sections III and IV of this preamble.

III. The September 14, 1999 Proposed Rule

On September 14, 1999, HUD published for public comment a notice of proposed rulemaking (NPRM) to implement the section 32 Homeownership program. That rulemaking proposed amendments to the 5(h) homeownership program as implemented in 24 CFR part 906.

The NPRM proposed reorganizing 24 CFR part 906 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 were proposed to be integrated with the 5(h) requirements that HUD determined 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.

The 5(h) statute and rule provided for sales only to the lower-income tenants of a PHA, including section 8 assistance recipients (although the 5(h) program allowed for income-eligible non-tenants to meet the residency requirement in order to purchase a unit). In contrast, 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. Therefore, the NPRM proposed that low-income families and purchase and resale entities (PREs) would be eligible to purchase units under the program (*see* § 906.11 of the NPRM, 64 FR 49935). The NPRM also proposed, at § 906.15, that a family purchasing a property under a PHA homeownership program would have to 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. The only exception to this requirement would be in the case of a public housing family currently residing in a unit to be sold, exercising their right of first refusal. Such families would have a right of first refusal even if they are over the income limit at the time their unit is offered for sale.

The NPRM proposed expanding the definitions of units that may be sold. Whole existing § 906.3 provides for sales of all or a portion of a public housing project, the NPRM notified the public that, in addition to public housing units, other units owned, operated, assisted, or acquired for homeownership sale that have received the benefit of 1937 Act funds could also

be sold (*see* proposed § 906.5(a), 64 FR 49934.)

As in the 5(h) rule, the NPRM proposed a resident consultation requirement. In the NPRM, resident consultation generally would occur through the PHA plan process under 24 CFR part 903 (*see* § 906.39(e)).

As to permitted methods of sale, § 906.25 of the NPRM followed closely the section 32 statute at paragraph (h) (42 U.S.C. 1437z-4(h)), stating that “any homeownership interest” that the PHA considers appropriate may be transferred to the purchasing family. Specific methods of sale listed include, but are not limited to: Fee simple; a condominium interest; an interest in a limited-dividend cooperative; or a shared appreciation interest with PHA financing.

The NPRM proposed expanding the definition of eligible purchasers to low-income families, rather than tenants receiving assistance as provided in the 5(h) rule at § 906.8. This proposed broader eligibility would follow the section 32 statute, (42 U.S.C. 1437z-4(c)). In addition, entities formed to purchase units and resell them to eligible purchasers, known in the NPRM as purchase and resale entities, would be eligible (*see* 42 U.S.C. 1437z-4(c)(1) and § 906.11 of the NPRM (64 FR 49935)). The NPRM suggested specific requirements incumbent upon PREs in § 906.19 (64 FR 49935). These proposed requirements would include financial and administrative capacity requirements, protection against fraud and abuse, and requirements that the Purchase and Resale Entity (PRE) fulfill the program goals of selling properties only to eligible families, enforced by deed and title restrictions. Also, the NPRM proposed requiring PREs to sell properties they acquire within five years, or transfer ownership to the PHA, as the statute requires (*see* 42 U.S.C. 1437z-4(c)(2).)

The NPRM proposed to retain the 5(h) program’s financial capacity requirements found at 24 CFR 906.8(e). (*See* proposed § 906.15(c) at 64 FR 49935.) In addition, the NPRM, following the statute, proposed requiring purchasing families to make a downpayment. The downpayment could consist of grant amounts, gifts from relatives, and other contributions for the downpayment, with the exception that an amount equal to one percent of the purchase price would be required to come from the family’s own resources. (*See* 42 U.S.C. 1437z-4(g) and proposed § 906.15(d), 64 FR 49935.)

An important difference between the 5(h) program on the one hand, and section 32 and the NPRM on the other,

is that, where the 5(h) program prohibits displacement of in-place residents in order to make a sale, the section 32 program and NPRM would clearly permit such displacement subject to specified protections for the in-place resident. The NPRM proposed giving a right of first refusal to the resident or residents occupying a public housing unit to be sold. (*See* 42 U.S.C. 1437z-4(d) and proposed § 906.13(a) at 64 FR 49935.) Nonpurchasing residents of units other than public housing units would not have a right of first refusal, but would be entitled to Uniform Relocation Act (URA) benefits. (*See* proposed § 906.24, 64 FR 49936.) Public housing residents who do not exercise their right of first refusal and whose unit is sold would be statutorily entitled to benefits, including: 90 days advance notice prior to the displacement date; an offer of comparable housing that meets housing quality standards and is located in an area that is generally not less desirable than the location of the displacee’s original housing; any necessary counseling; and payment of actual and reasonable moving expenses. (*See* 42 U.S.C. 1437z-4(e) and proposed § 906.23 at 64 FR 49936.) The only exception to the 90-day advance notice requirement would occur in the case where the unit presents an imminent threat to health and safety. This could occur, for example, in the case of a unit with a dangerous condition that the PHA plans to repair prior to selling the unit. In such a case, the NPRM proposed that the PHA could move the resident to another, safer unit without 90 days advance notice. (*See* 42 U.S.C. 1437z-4(e)(1) and proposed § 906.23 at 64 FR 49936.)

Another difference between the 5(h) and proposed section 32 programs is the treatment of profits on resale of a homeownership unit by the low-income family who originally purchased the unit under the program to a buyer on the open market. Where 5(h) was strict in preventing a windfall profit, that is, a profit based not on market appreciation but on a discount or government assistance provided to the purchaser, section 32 would provide a PHA with more flexibility in the recapture of assistance amounts on resale. A homeownership program under section 32 “shall provide such limitations on resale as the (public housing) agency considers appropriate * * * for the agency to recapture” all or a portion of the economic gain from resale in the first 5 years, and after that, only the gain attributable to assistance provided to the purchaser. (*See* 42 U.S.C. 1437z-4(i) and proposed § 906.27

at 64 FR 49936.) Therefore, a PHA would have broad flexibility in deciding how much to recapture; in HUD’s view, “a portion” of the gain could include an amount that is *de minimis*, or even zero.

The NPRM, like the current 5(h) rule codified at 24 CFR 906.20, proposed specific required contents of a homeownership plan. (*See* proposed § 906.39.) The 5(h) rule and NPRM required or would require: A property description; a plan for any required repair or rehabilitation; standards for purchaser eligibility and selection; terms and conditions of sale and financing; information about resident consultation; counseling, training and technical assistance to be provided; a plan for nonpurchasing residents (with the important difference that under 5(h), such a resident may elect to move or stay in place as a tenant, and under section 32, the resident can be required to move if given certain protections stated in proposed § 906.23 at 64 FR 49936); an estimate of the sales proceeds and explanation of how they will be used; an administrative plan; records and reports; and a budget and timetable. The NPRM proposed to eliminate the requirement for a replacement housing plan, as replacement housing is no longer required by law. The NPRM also proposed a requirement that, in cases where sales will be through a PRE, the plan contain a description of the PRE’s responsibilities and information demonstrating that regulatory requirements applicable to a PRE have been met.

The supporting documentation that the NPRM proposed to be required (proposed § 906.41 at 64 FR 49937) would be quite similar to the documentation required in the 5(h) program rule at 24 CFR 906.21. The main difference would be in the documentation of capacity to perform. Where the 5(h) program required broadly “information to substantiate the commitment and capability of the PHA and any other entity with substantial responsibilities for implementing the plan,” the NPRM would be more specific in its proposed documentary requirements in the analogous § 906.41(d) (64 FR 49938). As proposed, the PHA would be required to include a description of its past experience in carrying out low-income homeownership programs, and its reasons for considering such programs to have been successful. If the PHA has not carried out low-income homeownership programs the PHA could substitute documentation of experience in public housing modernization and development projects.

As to HUD review and approval of homeownership plans, the NPRM proposed to include additional criteria to the 5(h) approval criteria of legality, workability, and clear and complete documentation. (See 24 CFR 906.4.) In addition to these review criteria, under the NPRM, HUD would consider the PHA's performance in homeownership based on the experience criteria in proposed § 906.41(d) at 64 FR 49938.

IV. This Final Rule

A. Brief overview of major changes in the final rule.

- Financial capacity requirements have been adopted from the 5(h) program, requiring a family to have sufficient income that their monthly housing payments do not exceed 35 percent of their income and any assistance that will be available for such payments.
- On resale by the homeownership family, PHAs are given more flexibility in determining how much of the profit attributable to assistance to recapture.
- Below-market sales are permitted to ensure that eligible, low-income buyers have adequate homeownership opportunities.
- Provisions are added explicitly permitting lease-purchase arrangements, and regulating the disposition of lease income set aside for purchase, if no purchase occurs.
- The final rule is more flexible in allowing the development of non-public housing units to be sold to the PHA and used for homeownership. Rather than trying to prevent this, the final rule permits such development as long as the development complies with Davis-Bacon wage requirements and applicable environmental requirements.
- The environmental review procedure is made somewhat more flexible to allow for cases where all units to be sold may not be identified and fully reviewed prior to submission of the homeownership program. However, this flexibility does not affect the requirement that all sites or units must be approved for the program, and the PHA cannot commit to purchase or sell such sites or units, or commit funds for their construction and rehabilitation, until all applicable environmental requirements have been satisfied.
- Section 8(y) assistance may now be used in conjunction with a homeownership program under this rule.

B. Detailed Discussion of the Final Rule

Many of the 5(h) program requirements in part 906 were retained in this final rule, based on legislative

indications that Congress based section 32 largely on HUD's part 906 regulations, and that Congress regarded favorably HUD's detailed implementation of section 5(h), as in effect before the enactment of the QHWRA. However, certain changes were made.

In response to a public comment, a clarifying amendment was made to proposed § 906.3(b) regarding whether a part of a prior existing homeownership program can be converted to a program under this rule. In response to two comments, HUD made a minor amendment to proposed § 906.25 to clarify that the list of ownership interests that may be conveyed is not exclusive.

HUD has made a technical change to the section titles, removing the question and answer formatting, and has provided a more accurate description of the lead paint requirements in § 906.7(a), by cross-referencing to subparts A, B, L and R of the Lead Safe Housing regulations at 24 CFR part 35. Similarly, in §§ 906.5 and 906.7, HUD has more precisely described the accessibility requirements of 24 CFR part 8 as they apply to units sold under this program. These changes simply describe existing legal obligations and are not substantive changes in the rule.

HUD has made some substantive changes as well in response to comments. HUD has accepted comments that the financial capacity guidance from HUD's 5(h) program regulations be included in this new homeownership regulation. Accordingly, HUD has added § 906.15(c)(1), a financial capacity requirement parallel to 24 CFR 906.8(e)(1) (as of April 1, 2002). Also, § 906.15(a) is revised to clarify that a family in-place in public housing exercising its right of first refusal is eligible to purchase the unit regardless of the low-income requirement. This revision reflects the requirement in 42 U.S.C. 1437z-4(d) has an unqualified requirement that families occupying a public housing unit be given a right of first refusal for their unit.

HUD has clarified the right of first refusal provision at § 906.13(a) to include the case where the PRE sells the unit. However, it should be understood that in the case of a sale by the PRE, the right of first refusal only pertains if the resident was originally occupying the unit as a public housing resident at the time the PHA transferred the unit to the PRE for the purpose of resale to lower-income families.

HUD has revised § 906.27, "Limitations applicable to net proceeds on the sale of a property acquired

through a homeownership program," to more closely adhere to the statute. The statute gives PHAs the authority to determine the amount of net proceeds to recapture, including amounts of assistance, as well as to determine the factors to be used in making the recapture decision. The rule now has a similar provision. In addition, HUD has added subsections defining certain terms used in § 906.27, and clarifying that below-market financing, upon resale, is not counted when determining appreciation for recapture purposes under § 906.27, although such financing may be considered assistance in other contexts.

A new § 906.29 has been added, making it clear that below-market sales are permitted in order to ensure that eligible, low-income buyers have adequate homeownership opportunities. Such sales may be financed with below-market financing. A PHA may assist with purchases by providing second mortgages, including "soft" non-cash second mortgages, as well as other financing methods. Section 906.31 discusses the uses a PHA is permitted to make of the net proceeds of homeownership sales, after payment of the costs of sales. Generally, under § 906.31(a), a PHA may use the proceeds for "purposes related to low-income housing and in accordance with its PHA plan." If the PHA also uses section 8 assistance under the provisions of section 8(y) of the 1937 Act to provide homeownership opportunities, proceeds from sales may be used for expenses in the 8(y) program, such as providing counseling and down payment assistance. HUD encourages such uses to promote homeownership. New §§ 906.31(c) and (d) have been added to provide for situations where the Purchase and Resale Entity (PRE) fails to sell a unit within the statutorily allowed time (five years), and the unit reverts to the PHA. These sections are required to provide guidance in situations that may arise during the implementation of this program.

Section 906.35 has been revised to clarify what was already implicit, that the provisions of section 18 of the 1937 Act do not govern disposition for homeownership purposes under this part, including to a PRE for resale to a low-income family.

Revisions have been made to the required contents of a homeownership program in § 906.39. In response to comment, HUD has added provisions permitting lease-purchase arrangements (see § 906.39(a)). A lease-purchase arrangement generally provides that a portion of the tenant's rent be set aside for the eventual purchase of the unit. As

a consequence of allowing for lease-purchases, HUD had to further determine what would happen to the amount set aside if no purchase occurred. Section 906.39(a) provides that in such a situation, the set aside amount that represents a portion of the rent would go to the PHA; otherwise, the tenant would in effect be getting an additional rental subsidy. Of course, if the tenant has placed additional amounts in excess of rent in the account out of his or her own funds, those would revert to the tenant.

In response to public comments, HUD has amended the NPRM to require PHAs selling units to include in their program descriptions a description of the exact method or methods of conveyance to be used (see § 906.39(a)). In addition, in response to comments as to whether a leasehold interest is the kind of interest that can be transferred in a homeownership program, the rule clarifies that lease with option to purchase is such an interest. However, a traditional leasehold is not considered a type of ownership interest.

A new § 906.39(n) has been added to require a deed restriction or restrictive covenant to enforce the primary residence requirement and the requirement that the PHA have a recapture policy for resales where there is gain from appreciation. This section creates no new substantive requirements, but provides for continuing enforceability of an already existing requirement.

Proposed § 906.41 on supporting documentation has been redesignated as § 906.40 and revised. Section 906.40(a) relates specifically to sale to a PRE, and requires material specifically relevant to that situation. Section 906.40(b)–906.40(i) contains the general supporting documentation requirements from the NPRM. Proposed § 906.40(a) (the requirement of a property value estimate) is removed. This requirement related to proposed § 906.27, in which stricter recapture provisions were contemplated. Since, in response to comments, HUD is making recapture of proceeds on resale discretionary, this requirement for a property value estimate is no longer needed.

In the case where the PRE expects to operate the unit as public housing and the unit receives operating subsidy, the PHA must submit, along with its homeownership plan, certain information similar to that submitted in a mixed-finance development where both private funds and HUD funds are involved, and must comply with all rules and regulations regarding operation of public housing units. The information to be submitted in this case

is specified in § 906.40(a), and includes information regarding the provision of operating subsidy for the unit or units while owned by the PRE, amending the ACC governing the units, and a covenant running with the land that the units will be operated in accordance with public housing laws and regulations.

Proposed § 906.40, requirements applicable to acquisition of non-public housing, has been redesignated as § 906.41 and revised. This final rule revises the certification requirement of proposed § 906.40(a)(2), relating to non-public housing units acquired by the PHA for homeownership purposes (see § 906.41(a)(2)). The NPRM would have attempted to restrict non-public housing properties from being developed privately with the intent that they be sold to the PHA. HUD now believes that such a provision would not only be difficult to police but might unduly restrict homeownership opportunities. HUD is only concerned that such units be developed under appropriate conditions. Therefore, in the final rule, § 906.41(a)(2) requires the developer, which developed units under an agreement providing that they would be sold to the PHA, to certify that the units were developed according to Davis-Bacon wage rate requirements and applicable environmental requirements. Section 906.41(a)(8) of the final rule adds a requirement for a market analysis of the potential market for the homeownership units. This requirement will assist HUD in determining the program's feasibility under § 906.45(a).

The final rule revises § 906.45(b) to be consistent with § 906.40(f). Thus, the HUD review criteria in § 906.45 now include a certification of counsel for the PHA that the program meets legal requirements, rather than simply a general statement that the program must meet legal requirements.

HUD has revised proposed §§ 906.47 and 906.49 to clarify the intent that properties to be sold may be identified and subject to environmental reviews after the homeownership program is conditionally approved by HUD, rather than requiring the PHA to identify and fully review all properties beforehand. However, no specific sites or units can be finally approved for the homeownership program, and the PHA cannot commit to purchase or sell such sites or units, or commit funds for their construction and rehabilitation, until all applicable environmental requirements have been satisfied. HUD's regulations at 24 CFR 50.3(h) of this title provide for this possibility in the case where HUD performs the environmental review, which is reflected in the rule in order

to make implementation of a homeownership program more efficient. In cases where a responsible entity performs the review under 24 CFR part 58, HUD believes that a similar approach is warranted. The environmental provisions in § 906.47 have also been revised to clarify which environmental procedures apply for different situations that may arise under this program.

HUD has decided to allow homeownership assistance under section 8(y) of the 1937 Act, 42 U.S.C. 1437f(y) (the section 8(y) program or section 8(y) assistance), to be used in conjunction with a homeownership program pursuant to this rule. Accordingly, amendments have been made throughout this final rule where necessary to specifically allow such use of section 8(y) assistance. Section 906.5(b)(3) includes section 8(y) assistance among the assistance that a PHA may provide to a family purchasing a unit under the section 32 program. Such a family must meet the requirements of both programs, and the section 8(y) assistance must be provided under the 8(y) program rules. Section 906.7(b) specifies that a unit receiving such assistance must be an eligible unit for purposes of the section 8(y) implementing regulations at 24 CFR part 982, subpart M. If section 8(y) assistance is to be provided, a certificate of compliance with the 8(y) program is among the required supporting documentation in § 906.40 (see § 906.40(h)).

The section 32 program provides for the participation of purchase and resale entities (PREs), who may, under the requirements of § 906.19, purchase units for later resale to eligible low-income families. PREs may be, for example, non-profit housing organizations, community development corporations (CDCs), and private developers involved with public housing mixed-finance transactions that would administer 5-year lease-purchase programs.

Finally, in § 906.19(b)(7) and in § 906.40(e), which are sections referencing civil rights obligations, HUD has included cross-references to 24 CFR 5.105(a), which is the HUD regulation that lists applicable civil rights requirements.

Other specific issues have been addressed in responses to public comments, which are summarized below.

V. Public Comments on the NPRM

The NPRM, in addition to seeking comments on the rule generally, invited 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. HUD received 12 public comments. This section of the preamble presents a summary of the significant issues raised by the public commenters on the NPRM, and HUD's responses to those comments.

Comment: Four commenters questioned or made comments regarding the interplay between other homeownership programs and the new section 32 program.

A. One commenter asked whether a portion of an existing 5(h) homeownership program can be converted to a section 32 program.

HUD Response. Proposed § 906.3(b) states that "A PHA may convert an existing homeownership program to a homeownership program under this part with HUD approval." HUD believes that nothing prohibits converting specified units or developments from an existing homeownership program to the section 32 program, so long as all HUD approval requirements are met, including resident consultation as provided in proposed § 906.39(e). This final rule makes a clarifying amendment to proposed § 906.3(b).

B. One commenter asked whether a PHA may operate two separate homeownership programs under the new rule.

HUD Response. Nothing in the statute or this rule purports to prohibit a PHA from operating separate homeownership programs. HUD does not believe any amendment to the NPRM is necessary as a result of this comment.

C. One commenter asked how existing homeownership programs (other than 5(h) or Turnkey III) previously approved by HUD but not yet achieving financial closing, are to be treated under the new rule.

HUD Response. This rule does not cover any other homeownership programs in any express or implied manner, but is limited to the requirements of the section 32 homeownership program. HUD does not believe any amendment to the NPRM is necessary as a result of this comment.

D. One commenter stated that PHAs that currently operate an existing HUD-approved homeownership program should not be required to obtain separate approval for operating a homeownership program under this rule.

HUD Response. Congress has explicitly mandated HUD approval, whether or not the PHA already has a homeownership program. See 42 U.S.C. 1437z-4(a), which states that "an agency may transfer a unit pursuant to

a homeownership program only if the program is authorized under this section and approved by the Secretary." Therefore, HUD has made no change as a result of this comment.

Comment: Four commenters questioned either the types of dwelling units that may be sold or the homeownership interest that may be conveyed.

A. One commenter stated that the types of permissible dwelling units defined in proposed § 906.5 should be revised to explicitly include newly constructed housing.

HUD Response. Proposed § 906.5 does not purport to specifically list the types of units that may be sold, but rather sets forth a definition applicable to all units that may be sold in the program. These are units that are either public housing or non-public housing units that have received or will be sold using 1937 Act funds. If a newly constructed unit meets one of these requirements and all other applicable requirements, the unit can be sold in the program. Therefore, no change is made in response to this comment.

B. Two commenters stated that the list of ownership interests that may be conveyed in proposed § 906.25 should be expanded to include leasehold interests and cooperative housing, and another commenter raised a question regarding whether a "shared appreciation interest" may be sold only with PHA financing.

HUD Response. The NPRM provides that the homeownership program may convey "any ownership interest that the PHA considers appropriate." With respect to cooperative and other forms of ownership interest, nothing in the list of examples is meant to be exclusive. Therefore, there is no need to add additional specific types of ownership interests to the list of examples. HUD has added the clause "but not limited to" after the word "including" to clarify this intent.

With respect to leasehold interests, a pure leasehold is not generally considered a homeownership interest and would not be included. However, sale via a bona fide lease-purchase arrangement would be permissible, and HUD is making a change to § 906.39 to permit such sales.

Comment: Two commenters suggested changes to proposed § 906.7, which sets forth the physical condition standards for units offered for sale.

A. One commenter stated that property should be required to meet Real Estate Assessment Center ("REAC") guidelines.

HUD Response. For housing that will, once it is sold, no longer receive

funding under an ACC, HUD believes that the local code standards (or, if none exist, the Housing Quality Standards used in the Housing Choice Voucher program under 24 CFR part 982) are more appropriate. In addition, the current proposed § 906.7 is essentially similar to the parallel section in HUD's 5(h) program regulations, albeit slightly more stringent in that § 906.7 eliminates an escape clause for assurances of future repairs. Congress has generally approved HUD's implementation of the 5(h) program, and patterned the new statutory section 32 after the 5(h) regulations. (See 64 FR 49932.) Thus, HUD has made no change as a result of this comment.

B. One commenter stated that the rule should clarify the relationship between local code standards and the physical requirements for public housing.

HUD Response. Proposed § 906.7 provides that a property offered for sale must meet local code requirements or, if no local code exists, housing quality standards established by HUD under 24 CFR part 982. HUD believes that this description of the relationship between local code and public housing standards does not require further clarification. In addition, this final rule adds in § 906.7(a) a more precise description and citations for the lead paint requirements.

Comment: Two commenters stated that the final rule should address "the fact that the ACC subsidy that is attached to the particular unit that is sold could be transferred to another unit being brought on line" by the PHA.

HUD Response. Section 32 does not provide a basis for changing the ordinary public housing development requirements in part 941 of this title. Once the property is sold and the ACC terminates, as long as the PHA is under the total development limit set forth in 24 CFR 941.102(c), the PHA can develop another unit according to the normal development requirements. HUD has made no change as a result of this comment.

Comment: One commenter stated that the right of first refusal should be extended to residents of non-public housing units in the program.

HUD Response. Section 32 expressly grants the right of first refusal to residents occupying a public housing unit, but has made no similar provision for residents of non-public housing units. Non-public housing residents are entitled to Uniform Relocation Act benefits (See 49 CFR part 24 and part 42 of this title.) (See also proposed § 906.24). Therefore, HUD has made no change as a result of this comment.

Comment: Four commenters suggested changing or eliminating the down payment requirement in proposed § 906.15(c).

A. Two commenters stated that the down payment requirement of 1 percent should be calculated based on the mortgage amount, rather than the purchase price.

HUD Response. The statute explicitly directs that the family must contribute not less than 1 percent of the purchase price from its own resources. (See 42 U.S.C. 1437z-4(g)(2)). Therefore, HUD has made no change as a result of these comments.

B. One commenter stated that the down payment requirement could reduce the number of potential home buyers and should be determined at the local level, and another commenter stated that it should be removed because “it is too difficult to enforce.”

HUD Response. In addition to the fact that the down payment requirement is statutory, HUD disagrees with the premise of the comment. HUD believes that there are sufficient mechanisms built into the mortgage process, the recordkeeping and audit requirements of § 906.33, and the requirement under § 906.40 to submit supporting documentation, including documentation of the financing, to reasonably ensure compliance with the requirement.

Comment: Ten commenters opposed the requirement in proposed § 906.15(a) that families purchasing units in the program be low-income families. These commenters recommended that the final rule adopt the eligibility requirements of the 5(h) program. The commenters’ reasons included: The restriction would disqualify families who have participated in Family Self-Sufficiency and other programs designed to raise their incomes; if higher-income residents could purchase units, the PHA could make public housing units available to lower-income families who truly need them; and the limitation might conflict with the ceiling rent option.

HUD Response. The statute establishes the requirement that only low-income families and PREs are eligible to purchase units through the program. (See 42 U.S.C. 1437z-4(c)(1).) Therefore, HUD has made no change as a result of this comment.

Comment: Two commenters stated that proposed § 906.15(c) should be more specific as to financial capacity requirements for purchasing families. One of these commenters stated that § 906.8(e)(1) of the current 5(h) homeownership regulations in this title should be retained. That section

provides that “[o]n an average monthly estimate, the applicant’s payments for mortgage principal and interest, plus insurance, real estate taxes, utilities and other recurring homeownership costs . . . [must] not exceed . . . 35 percent of the applicant’s adjusted income,” taking into account any subsidy that will be available to the applicant for such payments. The other commenter stated that the final rule should provide guidance to PHAs on establishing an affordability ratio based on various homeownership costs, including factors to be taken into account, methods for calculating affordability and maximum percentages.

HUD Response. The statute does not prohibit HUD from setting financial capacity guidance. HUD agrees that the guidance provided in the 5(h) regulations was reasonable and workable in practice, in that it set a baseline standard to insure that PHAs sell units to families that can afford the debt burden involved in owning them. Such a guideline will help to insure that the program is successful in the long term. Therefore, HUD has integrated the financial capacity rule from the 5(h) regulations into the final rule. See 24 CFR 906.15(c).

Comment: Two commenters stated that the requirement of proposed § 906.15(b) that the dwelling unit sold to a family must be used as the principal residence of the family fails to take into account the possibility that a family may purchase a duplex and rent out the second unit.

HUD Response. The statute requires that units be purchased “for use only as principal residences.” (See 42 U.S.C. 1437z-4(a).) In addition, a PHA may only provide assistance to families under the statute to assist them in purchasing a principal residence. (See 42 U.S.C. 1437z-4(k).) Therefore, the statute precludes the type of duplex sales suggested by the comment, and the rule retains this requirement and makes it enforceable through a deed restriction or covenant running with the land. (See 24 CFR 906.39(n).)

Comment: Two commenters questioned provisions relating to PREs in proposed § 906.19.

A. The commenters suggested that the final rule should provide for the lifting of the deed restriction required in proposed § 906.19(c) upon the resale by the PRE to the low-income family to prevent encumbering the purchasing family.

HUD Response. The specific deed restriction to which this comment refers is an encumbrance only on the PRE’s title, not that of the subsequent purchasing family (although it should

be kept in mind that there are continuing restrictions on resale by the family under section 32(i), 42 U.S.C. 1437z-4(i)). HUD has made no changes as a result of this comment.

B. The commenters requested a provision for a waiver if the PRE cannot sell a unit “due to a condition that is outside the control of the PRE” of the requirement in proposed § 906.19(d) that the PRE agree to transfer ownership of a unit to the PHA if it fails to resell the unit under the program within 5 years.

HUD Response. The statute requires that a PRE “shall sell” units within 5 years from the date of its acquisition of the units (see 42 U.S.C. 1437z-4(c)(2)). Thus, HUD has no leeway to extend this time limit. By requiring a reversion if the PRE violates this statutory requirement, HUD has chosen what it believes to be the best means available to enforce this requirement. Therefore, HUD has made no changes as a result of this comment.

C. The commenters asked that the final rule clarify whether a unit that is transferred to a PRE retains its ACC contract subsidy.

HUD Response. Proposed § 906.9(b) states that, upon sale, HUD will execute a release of the title restrictions imposed by the ACC and the property will no longer be subject to the ACC. On its face, this proposed language applied to all sales, including to PREs. This is true if the PRE operates the property as non-public housing. However, if the transfer takes place in accordance with regulatory requirements for maintaining the unit as public housing, and if the PRE operates the units as public housing during the interim period before final sale, it would be subject to requirements of the 1937 Act, including that the unit be sold to low-income families, that Davis-Bacon wage requirements apply to work such as repair, rehabilitation, or modification for the purposes of accessibility, that HUD-determined wage rates apply to routine and nonroutine maintenance, and that the unit be operated in accordance with public housing rules and requirements. This final rule amends §§ 906.9 to specify that the release applies to PREs operating the units as non-public housing.

Comment: Two commenters raised issues regarding the protections for non-purchasing residents.

A. Proposed § 906.23 provides, as one of the protections for residents who are displaced because of a sale under the program, that the residents will receive counseling regarding their rights to comparable housing. “Comparable housing” includes housing that meets

housing quality standards. One commenter requested clarification regarding the relationship between housing quality standards and the HUD physical requirements applicable to housing units. The same commenter stated that local code requirements and physical requirements for public housing may be inconsistent.

HUD Response. In HUD's regulations, housing quality standards generally refer to the standards for decent, safe, and sanitary housing in good repair. These standards are well described in HUD's regulations (*see* 24 CFR 982.401). HUD does not believe that further clarification of the term in this rule is necessary.

As to the comment regarding inconsistency between physical requirements for public housing and local code requirements, proposed § 906.7 clarifies that relationship.

B. One commenter suggested that the URA protection granted by proposed § 906.24 to residents of non-public housing who are displaced by a sale under the program, be extended to public housing residents.

HUD Response. Section 32 of the U.S. Housing Act provides specifically for protections for non-purchasing public housing residents, including relocation assistance. (*See* 42 U.S.C. 1437z-4(e).) HUD believes that Congress intended for these protections exclusively to apply to the relocation of non-purchasing public housing residents, rather than the URA, and so has not adopted the suggested change. Non-public housing residents displaced by a sale are entitled to protections under the URA.

Comment: Three commenters suggested changes to proposed § 906.27, "Limitations applicable to net proceeds on the sale of a property acquired through a homeownership program." One commenter argued that the rule should not specify the time period during which appreciation may be recaptured by the PHA to help "curb speculation and . . . enable the state to preserve and recover a fair return on the state's resources upon resale, transfer, and rental of the property." Another commenter stated that the required resale period should be increased to 10 years "to secure a reduction in real estate taxes to assist in the affordability of housing" for new homeowners. A third commenter stated that recapturing the difference between the cost of construction and the sale price is a disincentive to potential purchasers.

HUD Response. Regarding the first two comments on the time period for resale with recapture, the statute sets 5 years as the time period during which the PHA may recapture some or all of

the economic gain derived from such resale. Since the time period is statutory, HUD cannot alter or eliminate the time period. As to the third of these comments, the statute provides for recapture; however, the PHA need not recapture all the net proceeds, but may recapture a portion that it deems appropriate based on the factors it considers. These factors may include such things as the equity contribution of the purchasing family and the time elapsed prior to the sale. Also, the rule is now more flexible in this area since it has been revised to permit recapture of "all or a portion" of assistance provided.

Comment: Two commenters noted that proposed § 906.27(c), which provides for an appraisal by a certified appraiser within 1 month before the resale, does not specify who pays for the appraisal. These commenters requested clarification.

HUD Response. HUD has eliminated this requirement from the rule as it has produced unnecessary confusion. Appraisals related to a resale by the family would be governed by the normal rules of the marketplace, under which an appraisal would ordinarily be required by the buyer or buyer's lender. Allocation of the costs of appraisal would follow normal practice.

Comment: Two commenters opposed the requirement in proposed § 906.31 that PHAs use proceeds of sales for purposes related to low-income housing, stating that by restricting the use of proceeds in this manner, the PHA would be prohibited from using the proceeds to develop programs for low-income families such as economic development programs, children's activity programs, gang related prevention programs, and scholarship programs.

HUD Response. The language in the rule is mandated by the statute (*see* 42 U.S.C. 1437z-4(j)). HUD believes that the phrase "for purposes related to low-income housing" is flexible and would include programs that would assist the residents of low-income housing as long as they are in accordance with the PHA's plan and otherwise lawful. For example, "purposes related to low-income housing" could include purposes related to the section 8(y) homeownership program. HUD has not made any change as a result of this comment.

Comment: One commenter asked what Davis-Bacon and HUD wage rate requirements apply to new construction in the program.

HUD Response. Section 906.37 is revised to clarify the applicability of Davis-Bacon and HUD wage rates.

Applicability of rates for rehabilitation, repairs, and accessibility modifications performed by, or under contract with, the PHA; new construction of non-public housing units pursuant to a contract for acquisition for use in a homeownership program; and operation, rehabilitation, and repair of units operated as public housing units by a PRE pending sale is specified. Davis-Bacon wage rates are rates not less than the wage rates prevailing in the locality for workers in specified categories, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. 276a-276a-5. HUD wage rates are rates adopted by HUD pursuant to section 12 of the 1937 Act, 42 U.S.C. 1437j. (*See* 24 CFR 968.110(e).)

Comment: Three commenters suggested additions to proposed § 906.39, which sets forth the required components of a homeownership program.

A. Two commenters suggested that the homeownership program should be required to include a description of the method of sale that will be used, such as fee simple, lease-purchase, etc.

HUD Response. HUD agrees and has amended the NPRM to so indicate. (*See* 24 CFR 906.39(a).)

B. Proposed § 906.39(c) (final rule § 906.39(d)) requires an affirmative fair housing marketing strategy (AFHM) for families who are not public housing or section 8 residents and are not on the PHA's waiting lists, if such families are eligible for the PHA's homeownership program. One commenter stated that the rule should specify what constitutes an acceptable fair housing marketing strategy.

HUD Response. HUD Directive 8025.1 rev-2, *Implementing Affirmative Fair Housing Marketing Requirements*, gives detailed guidelines regarding implementing AFHMs. In addition, each AFHM plan must be tailored to the local situation, and each local situation cannot be adequately addressed through a regulation of general applicability. Finally, PHAs already have experience with AFHM plans in other contexts, and are best positioned to implement appropriate AFHM strategies. Thus, HUD has made no changes as a result of this comment.

Comment: Among the documents that proposed § 906.41 requires to be submitted as supporting documentation for the proposed homeownership program is an opinion from the PHA's legal counsel that the proposed program complies with all Federal and local laws and regulations. One commenter suggested that HUD, rather than the

PHA's counsel, should provide the certification.

HUD Response. It is the responsibility of the PHA to determine that the program that it has submitted for approval complies with law, particularly given the variety of state and local laws that conceivably could apply. HUD has given this comment careful consideration, but declines to revise the rule to incorporate it. The requirement for a legal opinion is found at § 906.40(f) of this final rule.

Comment: The preamble to the September 14, 1999, NPRM specifically invited comments on whether HUD should specify underwriting standards or the types of documents to be used to secure that the investment of HUD funds in a property ultimately serves program purposes (see 64 FR 49932, third column). Four commenters responded that HUD should not specify underwriting standards or the types of documents to be used. These commenters stated the local mortgage industry should retain the discretion to provide loan products needed for the success of low-income homeownership programs. One commenter stated that cooperatives should be able to set their own requirements on the basis of their unique circumstances.

HUD Response. Pursuant to these comments, HUD has not at this time implemented specific underwriting standards or types of documents required. However, if, after further experience, it becomes clear that questionable practices are occurring or that standardized practices will enhance the program, HUD will propose further regulations in this area.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in §§ 906.17, 906.19, 906.33, 906.39, 906.40 (906.41 in the NPRM), 906.41, and 906.49 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0233. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this final rule is a “significant regulatory action,” as defined in section

3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final 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

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 8 a.m. and 5 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.

Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

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 final 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.

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.

The Catalogue of Federal Domestic Assistance number for the public housing program is 14.850.

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

PART 906—PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS

Subpart A—General

Sec.

906.1 Purpose.

906.2 Definitions.

906.3 Requirements applicable to homeownership programs previously approved by HUD.

Subpart B—Basic Program Requirements

906.5 Dwelling units and types of assistance that a PHA may make available under a homeownership program under this part.

906.7 Physical requirements that a property offered for sale under this part must meet.

906.9 Title restrictions and encumbrances on properties sold under a homeownership program.

Subpart C—Purchaser Requirements

906.11 Eligible purchasers.

906.13 Right of first refusal.

906.15 Requirements applicable to a family purchasing a property under a homeownership program.

906.17 PHA handling of homeownership applications.

906.19 Requirements applicable to a purchase and resale entity (PRE).

Subpart D—Program Administration

906.23 Protections available to non-purchasing public housing residents.

906.24 Protections available to non-purchasing residents of housing other than public housing.

906.25 Ownership interests that may be conveyed to a purchaser.

906.27 Limitations applicable to net proceeds on the sale of a property acquired through a homeownership program.

- 906.29 Below-Market sales and financing.
 906.31 Requirements applicable to net proceeds resulting from sale.
 906.33 Reporting and recordkeeping requirements.
 906.35 Inapplicability of section 18 of the United States Housing Act of 1937.
 906.37 Davis-Bacon and HUD wage rate requirements.

Subpart E—Program Submission and Approval

- 906.38 Requirement of HUD approval to implement a homeownership program under this part.
 906.39 Contents of a homeownership program.
 906.40 Supporting documentation.
 906.41 Additional supporting documentation for acquisition of non-public housing for homeownership.
 906.43 Where a PHA is to submit a homeownership program for HUD approval.
 906.45 HUD criteria for reviewing a proposed homeownership program.
 906.47 Environmental requirements.
 906.49 HUD approval; implementing agreements.

Authority: 42 U.S.C. 1437z-4 and 3535(d).

Subpart A—General

§ 906.1 Purpose.

(a) This part states the requirements and procedures governing public housing homeownership programs involving sales of individual dwelling units to families or to purchase and resale entities (PREs) for resale to families carried out by public housing agencies (PHAs), as authorized by section 32 of the United States Housing Act of 1937 (42 U.S.C. 1437z-4) (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. This section does not govern new construction or substantial rehabilitation of units sold under this part. Such construction or rehabilitation is governed by the public housing development and modernization regulations.

(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 developments, and other housing units or developments 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.

§ 906.2 Definitions.

Annual Contributions Contract (ACC) is defined in 24 CFR 5.403.

Low-income family is defined in the 1937 Act, 42 U.S.C. 1437a(b)(2).

Non-public housing unit means a housing unit that does not receive assistance under the 1937 Act (other than Section 8 assistance).

PHA Plan means the 5-year or annual plan required under section 5A of the 1937 Act, 42 U.S.C. 1437c-1, and its implementing regulations at 24 CFR part 903.

Purchase and Resale Entity (PRE) means an entity that acquires units for resale to low-income families in accordance with this part.

§ 906.3 Requirements 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, contained in the April 1, 2002, 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, or a specific number of the units in such a program, to a homeownership program under this part with HUD approval.

Subpart B—Basic Program Requirements

§ 906.5 Dwelling units and types of assistance that a PHA may 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 and 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). In selecting such units to be sold in a homeownership program under this part, the PHA shall not select units such that it could not comply with § 906.7(a).

(b) A homeownership program under this part may provide for financing to eligible families (*see* § 905.15 of this title) purchasing dwelling units eligible under paragraph (a) of this section under the program, or for acquisition of housing units or developments 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 assistance to public housing residents only to facilitate the purchase of homes (*e.g.*, counseling, closing costs, that portion of the down payment not required to be supplied from the purchaser's funds under the provisions of § 906.15(c), financing, and moving assistance). 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.*, funds 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.

(3) In accordance with the rules and regulations governing the Section 8(y) Homeownership Option, found in 24 CFR part 982 subpart M, a PHA may make its housing choice voucher funds available to provide assistance to a family purchasing a unit under this part. A family receiving assistance under the Section 8(y) program and participating in a homeownership program under this part must meet the requirements of both programs.

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

§ 906.7 Physical requirements that a property offered for sale under this part must meet.

(a) *Property standards.* 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 Choice Voucher Program, 24 CFR part 982) and the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the implementing regulations at 24 CFR part 35, subparts A, B, L, and R of this title. When a prospective purchaser who has known disabilities, or who has a family member with known disabilities requires accessible features, the features must be added as a reasonable accommodation to the disability, in accordance with the requirements of § 8.29 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.

(b) A unit in this program for which the purchasing family is receiving assistance under Section 8(y) must be an eligible unit for purposes of the Homeownership Option under 24 CFR part 982, subpart M.

§ 906.9 Title restrictions and encumbrances on properties sold under a homeownership program.

(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 to a public housing tenant or eligible family, or to a PRE operating the units as non-public housing, 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 Eligible purchasers.

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

§ 906.13 Right of first refusal.

(a) In selling a public housing unit under a homeownership program, the PHA or PRE must initially offer the unit to the resident occupying the unit, if any, notwithstanding the requirements of §§ 906.15(a) and 906.15(c).

(b) 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 of the unit.

§ 906.15 Requirements applicable to a family purchasing a property under a homeownership program.

(a) *Low-income requirement.* Except in the case of a PHA's offer of first refusal to a resident occupying the unit under § 906.13, 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. Under this affordability standard, an applicant must meet the following requirements:

(1) *Cost/income ratio.* On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance, and other regularly recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of:

(i) 35 percent of the applicant's adjusted income as defined in 24 CFR part 913; and

(ii) Any subsidy that will be available for such payments;

(2) *Down payment requirement.* Each family purchasing housing under a homeownership program must provide a down payment 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 (c)(3) 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 down payment;

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

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

not limited to requirements or limitations regarding:

(1) Employment or participation in employment counseling or training activities;

(2) Criminal activity;

(3) Participation in homeownership counseling programs; and

(4) Evidence of regular income.

§ 906.17 PHA handling of homeownership applications.

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 Requirements applicable to a purchase and resale entity (PRE).

(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 administrative capability to carry out its responsibilities under the program. The PHA's homeownership program also must contain a written agreement (not required to be submitted as part of the homeownership plan) that specifies the respective rights and obligations of the PHA and the PRE, and which includes:

(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 must 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, its implementing regulations, and other applicable civil rights statutes and authorities, including the authorities cited in § 5.105(a) of this title; 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.

Subpart D—Program Administration

§ 906.23 Protections available to non-purchasing public housing residents.

(a) If a public housing resident does not exercise the right of first refusal under § 906.13, and the PHA determines to move the tenant for the purpose of transferring possession of the unit, the PHA must provide the notice stated in this section 90 days before the date the resident is displaced, and may not displace the resident, except as stated in paragraph (a)(1) of this section, for the full 90-day period. 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 regarding 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) That 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 vacating.

§ 906.24 Protections available to non-purchasing 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 (*i.e.*, an individual or family that is not a low-income family) at the time of initial occupancy of public housing and was admitted in accordance with section 3(a)(5) of the 1937 Act, is treated as a non-purchasing resident of non-public housing.

§ 906.25 Ownership interests that may be 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 but not limited to:

(a) Ownership in fee simple;

(b) A condominium interest;

(c) An interest in a limited dividend cooperative;

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

(e) A leasehold under a bona fide lease-purchase arrangement.

§ 906.27 Limitations applicable to net proceeds on the sale of a property acquired through a homeownership program.

(a) Where the family has owned a unit under this part, the following rules apply:

(1) In this section, the term *gain from appreciation* means the financial gain on resale attributable solely to the home's appreciation in value over time, and not attributable to government-provided assistance or any below-market financing provided under § 906.29.

(2) In this section, the term *net proceeds* means the financial gain on resale received by the seller after satisfying all amounts owing under mortgages, paying closing costs, and receiving an amount equal to the down payment (made from the seller's own funds) and principal payments on the mortgage(s).

(3) A PHA must have a policy that provides for the recapture of net proceeds in an amount that the PHA considers appropriate under the guidelines in this section.

(4) A PHA must have a policy that provides the recapture of the following amounts, if a family resells a homeownership unit it purchased under this part during the 5-year period beginning upon purchase of the dwelling unit:

(i) All or a portion of the gain from appreciation; and

(ii) All or a portion of the assistance provided (which includes below-market financing, but which does not include Section 8(y) assistance used for mortgage payments under this part) under the homeownership program to the family to the extent there are net proceeds, considering the factors the PHA establishes under paragraphs (b)(1)–(7) of this section.

(b) The PHA's program under this part may provide for consideration of any factors the PHA considers appropriate in determining how much of the gain from appreciation and assistance to recapture, including but not limited to the following:

(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 in making the recapture determination under this section.

(c) After the expiration of the 5-year period in paragraph (a)(4) of this

section, the PHA must recapture all or a portion of the assistance provided under the homeownership program to the family to the extent there are net proceeds.

(d) The PHA must enforce its recapture policy through an appropriate form of title restriction.

§ 906.29 Below-Market sales and financing.

A homeownership plan may provide for below-market purchase prices or below-market financing to enable below-market purchases, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (e.g., uniform prices for a group of comparable dwellings, within a range of affordability by potential purchases). Below-market financing may include any lawful type of public or private financing, including but not limited to purchase-money mortgages, non-cash second mortgages, promissory notes, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§ 906.31 Requirements applicable to net proceeds resulting from sale.

(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 its PHA plan.

(b) *PRE use of resale net proceeds.* The PHA may require the PRE to return the net proceeds from the resale of 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.

(c) *Transfer of unsold unit to PHA.* In a situation where the PRE fails to sell a unit to an eligible family within 5 years, and the provision of § 906.19(d) requiring that the unit be transferred to the PHA applies:

(1) If the unit has not been operated by the PRE as a public housing unit at any time during the 5-year period, the PHA may resell the unit in accordance with this part or any successor homeownership program of the department, or apply to have the unit included in its public housing program, if it meets all statutory and regulatory requirements of the public housing program; or

(2) If the unit has been operated by the PRE as a public housing unit within such a 5-year period, the PHA must

return the unit to operation in its regular public housing program.

(d) *Transfer of unsold unit operated as public housing to PHA.* Where the PRE operates the unit as public housing during the 5-year interim period under § 906.40, and fails to sell the unit to an eligible family within such 5-year period and the provision of § 906.19(d) applies, the PHA must return the unit to operation in its regular public housing program.

§ 906.33 Reporting and recordkeeping requirements.

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. The PHA must report as part of the Annual Plan process under § 903.7(k) of this title, except for those PHAs under §§ 903.11(c)(1) and (2) of this title who are not required to include information on their public housing homeownership programs in their Annual Plan. Those PHAs must report by providing a description of the homeownership program to HUD, including the cumulative number of units sold.

§ 906.35 Inapplicability of section 18 of the United States Housing Act of 1937.

The provisions of section 18 of the 1937 Act (42 U.S.C. 1437p) do not apply to disposition of public housing dwelling units under a homeownership program approved by HUD under this part, or to the sale of a unit to a PRE to operate as public housing and sell to a low-income family within 5 years, under the requirements of § 906.19.

§ 906.37 Davis-Bacon and HUD wage rate requirements.

(a) *Wage rates applicable to laborers and mechanics.* Wage rate requirements in accordance with § 968.110(e) of this title apply to the following activities:

(1) Rehabilitation, repairs, and accessibility modifications performed under an agreement or contract with the PHA or by the PHA, pursuant to § 906.7. Davis-Bacon or HUD-determined wage rates apply as follows:

(i) Existing public housing units that will be sold under a homeownership program: Davis-Bacon rates apply, except that HUD rates apply to nonroutine maintenance as defined in § 968.105 of this title;

(ii) Non-public housing units acquired by a PHA using Capital Funds that will be sold under a homeownership program: Davis-Bacon rates apply; and

(iii) Non-public housing units owned or acquired by a PHA with the intent to use 1937 Act funds to finance the sale of the units, or otherwise provide assistance to purchasers of the units: Davis-Bacon rates apply;

(2) New construction of non-public housing units pursuant to a contract for acquisition by a PHA for the purpose of sale under a homeownership program: Davis-Bacon rates apply;

(3) Operation, rehabilitation, and repair of units operated as public housing units by a PRE: HUD rates apply to nonroutine maintenance, as defined in § 968.105 of this title, and routine maintenance. Davis-Bacon rates apply to rehabilitation and repair that does not qualify as nonroutine maintenance.

(b) *Technical wage rates.* All architects, technical engineers, draftsmen, and technicians employed in the development of units under a homeownership program shall be paid not less than the HUD-determined wage rates in accordance with § 968.100(f) of this title.

Subpart E—Program Submission and Approval

§ 906.38 Requirement of HUD approval to implement a homeownership program under this part.

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

§ 906.39 Contents of a homeownership program.

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

(a) *Method of Sale:* The PHA should indicate how units will be sold, including a description of the exact method of sale, such as, for example, fee simple conveyance, lease-purchase, or sale of a cooperative share. PHAs may sell units directly to a tenant or eligible family directly or via a *bona fide* lease-purchase arrangement. The PHA must indicate whether it, or a PRE will sell

units to families directly or via such lease-purchase method. If the PHA or PRE will use a lease-purchase method the proposal should indicate the terms of the lease-purchase arrangement. The terms of the lease-purchase arrangement shall include, but are not limited to the periodic documentation to be provided to the family regarding the amount they have accrued toward the down payment, and the length of the lease period (with regard to PREs the sales must be completed within the statutory 5-year period.);

(b) *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(s) 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 development;

(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;

(c) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation needed to meet the requirements of § 906.7, based on the assessment of the physical condition of the property that is included in the supporting documentation. The restriction in 906.5(c) of this part applies to such repair or rehabilitation;

(d) *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, including persons with disabilities;

(e) *Sale and financing.* Terms and conditions of sale and financing, including any below-market financing under § 906.29;

(f) *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. If the PHA is one whose Plan does not require information regarding homeownership under § 903.11(b)(1) of this title, the PHA must consult with the Resident Advisory Board or Boards regarding the homeownership plan, and provide the information required in this paragraph;

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

(h) *Sale via PRE.* If the program 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;

(i) *Non-purchasing residents.* If applicable, a plan for non-purchasing residents, in accordance with § 906.23;

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

(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 program;

(n) *Deed restrictions.* A deed restriction or covenant running with the land that will assure to HUD's satisfaction that the requirements of §§ 906.27 and 906.15(b) are met.

§ 906.40 Supporting documentation.

The following supporting documentation must be submitted to HUD with the proposed homeownership program, as appropriate for the particular program:

(a) *Supporting documentation—PREs.* In approving homeownership programs in which the PHA contemplates selling public housing units to a PRE for operation as public housing during the 5 year interim period the department will require evidentiary materials including but not limited to:

(1) Organizational documents of the PRE;

(2) Regulatory and operating agreement between the PHA and PRE regarding the provision of operating subsidy and the operation of the public

housing units in accordance with all applicable public housing requirements;

(3) Management agreement and plan;

(4) Financing documents, if any;

(5) A description of the use of operating subsidy during the PRE's period of ownership, in the form of an operating pro forma;

(6) A mixed-finance ACC amendment governing these units;

(7) A deed restriction or covenant running with the land that will assure to HUD's satisfaction that the PRE will operate the units in accordance with public housing laws and regulations, including § 906.19.

(8) A bond for repairs or proof of insurance to cover any damage to the property during the period of PRE ownership and operation;

(9) Such other materials as may be required by HUD.

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

(c) *Feasibility.* A statement demonstrating the practical feasibility of the program, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, accessibility costs, if applicable, 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 part 905 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, other authorities cited in § 5.105(a) of this title, and the 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 ensure sales only to eligible families under § 906.15, compliance with the 5-year PRE sale guarantee in § 906.19(d), and compliance with 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) *Section 8(y).* In any case where the PHA plans to provide families with assistance under the Section 8(y) homeownership option in connection with homeownership under this part, a certification that the PHA will comply with the requirements of the Section 8(y) statute and implementing regulations;

(i) *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 and the deed restriction required by § 906.39(n), 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.

§ 906.41 Additional supporting documentation for acquisition of non-public housing for homeownership.

(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) *Property description.* A description of the properties, including the number of housing units, unit types, and number of bedrooms, and any non-dwelling facilities on the properties to be acquired;

(2) *Certification.* If the housing units were constructed under a contract or an agreement that they be sold to the PHA, a certification that the developer/owner complied with all Davis-Bacon wage rate requirements under § 906.37,

including all required contractual provisions and compliance measures, and that the PHA received all applicable HUD environmental approvals and all applicable HUD releases of funds before executing the contract or agreement, in accordance with § 906.47(d).

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

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

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

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

(7) *Environmental information.* (i) The environmental information required by § 906.47(f), where HUD will perform the environmental review under 24 CFR part 50, or a statement identifying the responsible entity that has performed or will perform the review under 24 CFR part 58. This paragraph (a)(7)(i) does not apply to a property where a contract or agreement for sale to the PHA has already been executed and HUD has already given prior approval of the property following environmental review under 24 CFR part 50.

(ii) Where the PHA's homeownership program is submitted for approval to HUD and contemplates acquisition of properties not identified at the time of submission or approval, the procedures at § 906.47(e) apply.

(8) *Market analysis.* An analysis of the potential market of eligible purchasers for the homeownership units.

(9) *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 each property is limited by the housing cost cap limit, as determined by HUD.

§ 906.43 Where a PHA is to 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 with a copy to the appropriate HUD field office.

§ 906.45 HUD criteria for reviewing a proposed homeownership program.

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

(a) *Feasibility.* The program must be practically feasible, 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.* Counsel for the PHA shall certify that the homeownership program is consistent with applicable law, including the requirements of this part and any other applicable federal, state, and local statutes and regulations, including existing contracts, and HUD shall accept such certification unless HUD has information indicating that the certification is incorrect.

(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 Environmental requirements.

(a) *General.* HUD environmental regulations at 24 CFR part 58 apply to this part, unless, under § 58.11 of this title, HUD itself performs the environmental review under 24 CFR part 50. The PHA conducting a homeownership program under this part must comply with this section and part 50 or 58, as applicable.

(b) *Assistance to facilitate the purchase of homes.* Where the PHA's homeownership program involves assistance provided under the 1937 Act solely to assist homebuyers to purchase existing dwelling units or dwelling units under construction, 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.

(c) *Public housing units in the PHA's inventory.* Before the PHA rehabilitates or repairs units in its inventory for use for homeownership, or expends or commits HUD or local funds for such activities, the responsible entity must comply with part 58 and the PHA, where required, must submit and receive HUD approval of its request for release of funds, or HUD must have completed any part 50 environmental review and notified the PHA of its approval of the property. HUD may not release funds under this part before the appropriate approval is obtained.

(d) *Units to be acquired with federal funds and used for public housing*

homeownership. A PHA may not enter into any contract for acquisition of real property to be used in a homeownership program unless the required environmental reviews have been performed and approvals have been obtained.

(e) *Specific units unidentified.* Where the PHA's homeownership program contemplates acquisition of properties not identified at the time of submission, the PHA must certify that it will comply with this section, including paragraph (f) of this section, prior to such acquisition or construction. HUD may conditionally approve such a homeownership program; however, HUD will not give final approval of any site or unit until the required environmental review has been completed.

(f) *Information.* The PHA shall supply all relevant information necessary for the responsible entity, or HUD, if applicable, to perform the

environmental review for each property included in the homeownership program, and, if necessary, shall carry out mitigating measures or select alternate eligible properties. Where HUD performs the environmental review, the PHA shall comply with 24 CFR 50.3(h).

(g) *Non-exclusivity.* Nothing in this section relieves the participating PHA, and its partners and contractors, from complying with all requirements of 24 CFR part 50 or part 58, as applicable.

§ 906.49 HUD approval; implementing agreement.

HUD may approve a homeownership program as submitted, conditionally approve it under § 906.47(e), or return it to the PHA for revision and resubmission. Where such conditional approval is given, the PHA, partners, and contractors remain subject to the restrictions in § 906.47. 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: March 4, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03-5653 Filed 3-10-03; 8:45 am]

BILLING CODE 4210-33-P