

collectively deemed to be the PHA's certification that it is in compliance with the provisions of this part and all other Public Housing Program Requirements. Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in §905.804 of this part.

**§905.802 HUD review of PHA performance.**

(a) *HUD determination.* HUD shall review the PHA's performance in completing work in accordance with this part. HUD may make such other reviews when and as it determines necessary. When conducting such a review, HUD shall, at minimum, make the following determinations:

(1) HUD shall determine whether the PHA has carried out its activities under this part in a timely manner and in accordance with its CFP 5-Year Action Plan and other applicable requirements.

(2) HUD shall determine whether the PHA has a continuing capacity to carry out its Capital Fund activities in a timely manner.

(3) HUD shall determine whether the PHA has accurately reported its obligation and expenditures in a timely manner.

(4) HUD shall determine whether the PHA has accurately reported required building and unit data for the calculation of the formula.

(5) HUD shall determine whether the PHA has obtained approval for any CFFP or OFFP proposal and any PHA development proposal.

(b) [Reserved]

**§905.804 Sanctions.**

(a) If at any time, HUD finds that a PHA has failed to comply substantially with any provision this part, HUD may impose one or a combination of sanctions, as it determines is necessary. Sanctions associated with failure to obligate or expend in a timely manner are specified at §905.306 of this part. Other possible sanctions that HUD may impose for noncompliance by the PHA include, but are not limited to, the following:

(1) Issue a corrective action order, at any time, by notifying the PHA of the

specific program requirements that the PHA has violated, and specifying that any of the corrective actions listed in this section must be taken. Any corrective action ordered by HUD shall become a condition of the CF ACC Amendment.

(2) Require reimbursement from non-HUD sources.

(3) Limit, withhold, reduce, or terminate Capital Fund or Operating Fund assistance.

(4) Issue a Limited Denial of Participation or Debar responsible PHA officials, pursuant to 2 CFR parts 180 and 2424.

(5) Withhold assistance to the PHA under section 8 of the Act, 42 U.S.C. 1437f.

(6) Declare a breach of the CF ACC with respect to some or all of the PHA's functions.

(7) Take any other available corrective action or sanction as HUD deems necessary.

(b) *Right to appeal.* Before taking any action described in paragraph (a) of this section, HUD shall notify the PHA of its finding and proposed action and provide to the PHA an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the finding and proposed action to HUD's Assistant Secretary for Public and Indian Housing.

**PART 906—PUBLIC HOUSING  
HOMEOWNERSHIP PROGRAMS**

**Subpart A—General**

Sec.

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AUTHORITY: 42 U.S.C. 1437z–4 and 3535(d).

SOURCE: 68 FR 1172, Mar. 11, 2003, unless otherwise noted.

**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 enti-

ties (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

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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

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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) Which may include:
  - (i) Tenant-based assistance (tenant-based assistance must only be provided upon the relocation of the resident to the comparable housing);
  - (ii) Project-based assistance; or
  - (iii) Occupancy in a unit owned, operated, or assisted by the PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is 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.

### § 906.33

(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 §960.40, 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 hous-

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ing 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 assist-

ance 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

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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 re-

garding 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 non-discriminatory 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

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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 pro-

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gram) 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.

**PART 907—SUBSTANTIAL DEFAULT BY A PUBLIC HOUSING AGENCY**

Sec.

907.1 Purpose and scope.

907.3 Bases for substantial default.

907.5 Procedures for declaring substantial default.

907.7 Remedies for substantial default.

AUTHORITY: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

SOURCE: 76 FR 10162, Feb. 23, 2011, unless otherwise noted.

**§ 907.1 Purpose and scope.**

This part provides the criteria and procedures for determining and declaring substantial default by a public housing agency (PHA) and the actions available to HUD to address and remedy substantial default by a PHA. Nothing in this part shall limit the discretion of HUD to take any action available under the provisions of section 6(j)(3)(A) of the 1937 Act (42 U.S.C. 1437d(j)(3)(A)), any applicable annual contributions contract (ACC), or any other law or regulation that may authorize HUD to take actions against a PHA that is in substantial default.

**§ 907.3 Bases for substantial default.**

(a) *Violations of laws and agreements.* A PHA may be declared in substantial default when the PHA:

- (1) Violates a federal statute;
- (2) Violates a federal regulation; or
- (3) Violates one or more terms of an ACC, or other covenants or conditions to which the PHA is subject.

(b) *Failure to act.* In addition to the violations listed in paragraph (a) of this section, in the case where a PHA is designated as a troubled performer under PHAS, the PHA shall be in substantial default if the PHA:

- (1) Fails to execute an MOA;
- (2) Fails to comply with the terms of an MOA; or
- (3) Fails to show substantial improvement, as provided in § 902.75(d) of this chapter.

**§ 907.5 Procedures for declaring substantial default.**

(a) *Notification of finding of substantial default.* If the PHA is found in substantial default, the PHA shall be notified of such determination in writing. Except in situations as described in paragraph (d) of this section, the PHA shall have an opportunity to respond to the written determination, and an opportunity to cure the default, if a cure of the default is determined appropriate by HUD. The determination of substantial default shall be transmitted to the