

("HUD"), the following Development or Developments in its homeownership opportunity program (hereinafter referred to as the "Development"):¹

WHEREAS, an organization of residents ("Homebuyers") is an essential element in such Development for purposes of effective participation of the Homebuyers in the management of the Development and representation of the Homebuyers in their relationships with the Authority, and for other purposes; and

WHEREAS, the _____ Homebuyers Association ("Association") fully represents the Homebuyers of the Development;

NOW, THEREFORE, this agreement is entered into by and between the Authority and the Association and they do hereby agree as follows:

1. The Association, whose Articles of Incorporation are attached hereto and made a part hereof, is hereby recognized as the established representative of the Homebuyers of the Development and is the sole group entitled to represent them as tenants or Homebuyers before the Authority;

2. For each fiscal year, the Authority shall make available funds to the Association for its normal expenses, in such amounts as may be available to the Authority for such purposes and subject to whatever applicable HUD regulations;

3. The Association shall be entitled to the use of office space in _____ at the Development without charge by the Authority for such use;

4. The Authority and the officers of the Association shall meet at a location convenient to both parties on the _____ (day) of each month to discuss matters of interest to either party;

5. In the event the parties later agree that the Association should assume management responsibilities now held by the Authority, a contract for such purpose will be negotiated by _____ the Association;

_____ terminate upon dissolution of the Association.

IN WITNESS HEREOF, the parties have executed this Agreement on _____, 19____.

Local Housing Authority
By (Official Title) _____

Homebuyers Association
By (Official Title) _____

WITNESSES: _____

PART 905 [RESERVED]

¹List here the specific Development or Developments whose Homebuyers are represented by the Homebuyers Association with which this Agreement is entered into.

**PART 906—SECTION 5(h)
HOMEOWNERSHIP PROGRAM**

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

SOURCE: 59 FR 56365, Nov. 10, 1994, unless otherwise noted.

§906.1 Purpose.

This part codifies the provisions of the Section 5(h) Homeownership Program for public housing, as authorized by sections 5(h) and 6(c)(4)(D) of the United States Housing Act of 1937 (Act) and administered by the Department of Housing and Urban Development (HUD).

§906.2 Applicability.

(a) *General applicability.* This part applies to public housing owned by public housing agencies (PHAs) (excluding Indian Housing Authorities (IHAs)) subject to Annual Contributions Contracts (ACCs) under the Act. In reference to housing properties, "development" means the same as "project" (as defined in the Act). Except where otherwise indicated by the context, "resident" means the same as "tenant", as the latter term is used in the Act, including Turnkey III homebuyers, if applicable, as well as rental tenants of public housing and Section 8 residents,

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and references to sale, purchase, conveyance and ownership include the types of interests and transactions that are incident to cooperative ownership.

(b) *Nonretroactivity.* In the case of a Section 5(h) homeownership plan that was approved by HUD prior to the effective date of the interim rule under this part (October 21, 1991), no modifications or additional requirements will be imposed under the provisions of the interim or final rule, except for reasonable administrative procedures prescribed by HUD. Similarly, in the case of a plan that was approved under the interim rule, before the effective date of the final rule (December 12, 1994), no modifications or additional requirements will be imposed under the provisions of the final rule, except for such reasonable administrative procedures.

§ 906.3 General authority for sale.

A PHA may sell all or a portion of a public housing development to eligible residents, as defined under § 906.8, for purposes of homeownership, according to a homeownership plan approved by HUD under this part. If the development is subject to indebtedness under the 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. (In the case of a development with financing restrictions (such as a bond-financed development), however, sale is subject to the terms and conditions of the applicable restrictions.) Upon sale in accordance with the HUD-approved homeownership plan, 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 further HUD funding for public housing operating subsidies or modernization under the Act upon conveyance of title by the PHA. (That does not preclude any other types of post-sale subsidies that may be available, under other Federal, State, or local programs, such as the possibility of available assistance under Section 8 of the Act, in connection with a plan for cooperative home-

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ownership, if authorized by the Section 8 regulations.)

§ 906.4 Fundamental criteria for HUD approval.

HUD will approve a PHA's homeownership plan if it meets all three of the following criteria:

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

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

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

§ 906.5 Resident consultation and involvement.

(a) *Resident input.* In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the PHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the PHA. If the plan contemplates sale of units in an entirely vacant development, the PHA shall consult with the PHA-wide resident organization, if any. While the Act gives the PHA sole legal authority for final decisions, as to whether or not to submit a proposed homeownership plan and the content of such a proposal, the PHA shall give residents and their resident organizations full opportunity for input in the homeownership planning process, and full consideration of their concerns and opinions.

(b) *Resident initiatives.* Where individual residents, a Resident Management Corporation (RMC), or another form of resident organization may wish to initiate discussion of a possible homeownership plan, the PHA shall negotiate with them in good faith. Joint development and submission of the plan by the PHA and RMC, or other resident organization, is encouraged. In addition, participation of an RMC or other resident organization in the implementation of the plan is encouraged.

(Approved by the Office of Management and Budget under control number 2577-0201)

§ 906.6 Property that may be sold.

(a) *Types of property.* Subject to the workability criterion of § 906.4(a) (including, for example, consideration of common elements and other characteristics of the property), a homeownership plan may provide for sale of one or more dwellings, along with interests in any common elements, comprising all or a portion of one or more public housing developments. A plan may provide for conversion of existing public housing to homeownership or for homeownership sale of newly-developed public housing. (However, for public housing units developed as replacement housing for units demolished or disposed of pursuant to 24 CFR part 970, that part requires that the initial occupants be selected solely on the basis of the requirements governing rental occupancy, without reference to any additional homeownership eligibility or selection requirements under this part.) Turnkey III homeownership units may be converted to Section 5(h) homeownership, upon voluntary termination by any existing Turnkey III homebuyers of their contractual rights and amendment of the ACC, in a form prescribed by HUD.

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under 24 CFR part 882) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under subpart C of 24 CFR part 35. When a prospective pur-

chaser with disabilities requests accessible features, the features must be added in accordance with 24 CFR parts 8 and 9. 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, unless the terms of sale include measures to assure that the work will be completed within a reasonable time after conveyance, not to exceed two years (*e.g.*, as a part of a mortgage financing package that provides the purchaser with a home improvement loan or pursuant to a sound sweat equity arrangement).

§ 906.7 Methods of sale and ownership.

(a) *Permissible methods.* Any appropriate method of sale and ownership may be used, such as fee-simple conveyance of single-family dwellings or conversion of multifamily buildings to resident-owned cooperatives or condominiums.

(b) *Direct or indirect sale.* A PHA may sell dwellings to residents directly or (with respect to multifamily buildings or a group of single-family dwellings) through another entity established and governed by, and solely composed of, residents of the PHA's public housing, provided that:

(1) The other entity has the necessary legal capacity and practical capability to carry out its responsibilities under the plan; and

(2) The respective rights and obligations of the PHA and the other entity will be specified by a written agreement that includes:

(i) Assurances that the other entity will comply with all provisions of the HUD-approved homeownership plan;

(ii) Assurances that the PHA's conveyance of the property to the other entity will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible residents, in accordance with the HUD-approved homeownership plan, or by reconveyance to the PHA,

and that the property will not be encumbered by the other entity without the written consent of the PHA;

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

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

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

(vi) Accountability to the PHA and residents for the recordkeeping, reporting and audit requirements of § 906.17;

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

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

§ 906.8 Purchaser eligibility and selection.

Standards and procedures for eligibility and selection of the initial purchasers of individual dwellings shall be consistent with the following provisions:

(a) *Applications.* Persons who are interested in purchase must submit applications for that specific purpose, and those applications shall be handled separately from applications for other PHA programs. For vacant units, applications shall be dated as received by the PHA and, subject to eligibility and preference factors, selection shall be made in the order of receipt. Application for homeownership shall not affect an applicant's place on any other PHA waiting list.

(b) *Eligibility threshold.* Subject to any additional eligibility and preference standards that are required or permitted under this section, a homeownership plan may provide for the eligibility of residents of public housing owned or leased by the seller PHA (including Turnkey III homebuyers who

may elect to terminate their existing Turnkey III homebuyer agreements in favor of purchase under the Section 5(h) homeownership plan) and residents of other housing who are receiving housing assistance under Section 8 of the Act, under an ACC administered by the seller PHA, provided that the resident has been in lawful occupancy for a minimum period specified in the plan (not less than 30 days prior to conveyance of title to the dwelling to be purchased). For residents of other housing who are receiving housing assistance under Section 8, the minimum occupancy requirement may be satisfied in the unit for which the family is receiving Section 8 assistance or the public housing unit. If the family is to meet part or all of the minimum occupancy requirement in the public housing unit, the Section 8 assistance must be terminated before the family moves into the public housing unit. Public housing units are ineligible for Section 8 certificate and voucher assistance as long as they remain under ACC as public housing.

(c) *Applicants who do not meet minimum residency requirement for eligibility.*

(1) A homeownership plan, at PHA discretion, may also permit eligibility for applicants who do not meet the minimum residency requirement of paragraph (b) of this section (30 days or more, as prescribed by the homeownership plan) at the time of application, provided that their selection is conditioned upon completion of the minimum residency requirement prior to conveyance of title. (A plan may thus allow satisfaction of the threshold requirements for eligibility by:

(i) Existing public housing or Section 8 residents with less than the minimum period of residency;

(ii) Families who are already on the PHA's waiting lists; and

(iii) Other low-income families who are neither public housing nor Section 8 residents at the time of application or selection.)

(2) Applicants who are not already public housing residents, however, must also satisfy the requirements for admission to such housing.

(d) *Compliance with lease obligations.* Eligibility shall be limited to residents who have been current in all of their

lease obligations (in the case of Turnkey III homebuyers, obligations under their Turnkey III homebuyer agreements) over a period of not less than six months prior to conveyance of title (or, if so provided by the homeownership plan, such lesser period as has elapsed since the beginning of public housing or Section 8 tenure), including, but not limited to, payment of rents (or homebuyer's monthly payments) and other charges, and reporting of all income that is pertinent to determination of rental charges (or homebuyer's monthly payments). At the PHA's discretion, the homeownership plan may allow a resident to remedy under-reporting of income, provided that proper reporting of income would not have resulted in ineligibility for admission to public housing or for Section 8 assistance, by payment of the resulting underpayment for rent (or homebuyer's monthly payments) prior to conveyance of title to the homeownership dwelling, either in a lump-sum or in installments over a reasonable period. Alternatively, the plan may permit payment within a reasonable period after conveyance of title, under an agreement secured by a mortgage on the property.

(e) *Affordability standard.* Eligibility shall be limited to residents 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 plan may, however, take account of any available subsidy from other sources (*e.g.*, in connection with a plan for cooperative ownership, assistance under Section 8 of the Act, if available and authorized by the Section 8 regulations). Under this affordability standard, an applicant must meet the following requirements:

(1) 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, coopera-

tive, 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) The applicant can pay any amounts required for closing, such as a downpayment (if any) and closing costs chargeable to the purchaser, in accordance with the homeownership plan.

(f) *Option to restrict eligibility.* A homeownership plan may, at the PHA's discretion, restrict eligibility to one or more residency-based categories (*e.g.*, for occupied units, eligibility may be restricted to the existing residents of the units to be sold; for vacant units, eligibility may be restricted to public housing residents only, or to public housing residents plus any one or more of the other residency-based categories that may be established under paragraphs (b) and (c) of this section), as may be reasonable in view of the number of units to be offered for sale and the estimated number of eligible applicants in various categories, provided that the residency-based preference requirements mandated by paragraph (g) of this section are observed.

(g) *Residency-based preferences.* For occupied units, a preference shall be given to the existing residents of each of the dwellings to be sold. For vacant units (including units which are voluntarily vacated), a preference shall be given to residents of other public housing units owned or leased by the seller PHA (over any other residency-based categories that may be established by the homeownership plan for Section 8 residents and any categories of non-resident applicants).

(h) *Self sufficiency preference.* For vacant units, a further preference shall be given to those applicants who have completed self-sufficiency and job training programs, as identified in the homeownership plan, or who meet equivalent standards of economic self-sufficiency, such as actual employment experience, as specified in the homeownership plan.

(i) *Other eligibility or preference standards.* If consistent with the other provisions of this section, a homeownership plan may include any other standards

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for eligibility or preference, or both, at the discretion of the PHA, that are not contrary to law.

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§ 906.9 Counseling, training, and technical assistance.

Appropriate counseling shall be provided to prospective and actual purchasers, as necessary for each stage of implementation of the homeownership plan. Particular attention must be given to the terms of purchase and financing, along with the other financial and maintenance responsibilities of homeownership. In addition, where applicable, appropriate training and technical assistance shall be provided to any entity (such as an RMC, other resident organization, or a cooperative or condominium entity) that has responsibilities for carrying out the plan.

§ 906.10 Nonpurchasing residents.

(a) *Nonpurchasing resident's options.* If an existing resident of a dwelling authorized for sale under a homeownership plan is ineligible for purchase, or declines to purchase, the resident shall be given the choice of either relocation to other suitable and affordable housing or continued occupancy of the present dwelling on a rental basis, at a rent no higher than that permitted by the Act. Displacement (permanent, involuntary move) in order to make a dwelling available for sale, is prohibited. In addition to applicable program sanctions, a violation of the displacement prohibition may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and implementing regulations at 49 CFR Part 24. Where continued rental occupancy by a nonpurchasing resident is contemplated after conversion of the property to cooperative or condominium ownership, the homeownership plan must include provision for any rental subsidy required (e.g., Section 8 assistance, if available and authorized by the Section 8 regulations). As soon as feasible after they can be identified, all nonpurchasing residents shall be given

written notice of their options under this section.

(b) *Relocation assistance.* A nonpurchasing resident who chooses to relocate pursuant to this section shall be offered the following relocation assistance:

(1) Advisory services to assure full choices and real opportunities to obtain relocation within a full range of neighborhoods where suitable housing may be found, in and outside areas of minority concentration, including timely information, counseling, explanation of the resident's rights under the Fair Housing Act, and referrals to suitable, safe, sanitary and affordable housing (at a rent no higher than permitted by the Act), which is of the resident's choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, sex, or familial status, in compliance with applicable Federal and State law. This requirement will be met if the resident is offered the opportunity to relocate to other suitable housing under the Public Housing Program, any of the housing assistance programs under Section 8 of the Act, or any other Federal, State or local program that is comparable, as to standards of housing quality, admission and rent, to the programs under the Act, and provides a term of assistance of at least five years; and

(2) Payment for actual, reasonable moving and related expenses.

(c) *Temporary relocation.* A nonpurchasing resident who must relocate temporarily to permit work to be carried out shall be provided suitable, decent, safe and sanitary housing for the temporary period and reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent and utility costs.

§ 906.11 Nonroutine maintenance reserve.

(a) *When reserve is required.* A nonroutine maintenance reserve shall be established for all multifamily properties sold under a homeownership plan. For single-family dwellings, such a reserve shall not be required if the availability

of the funds needed for nonroutine maintenance is adequately addressed under the affordability standard prescribed by the plan.

(b) *Purpose of reserve.* The purpose of this reserve shall be to provide a source of reserve funds for nonroutine maintenance (including replacement), as necessary to ensure the long-term success of the plan, including protection of the interests of the homeowners and the PHA. The amounts to be set aside, and other terms of this reserve, shall be as necessary and appropriate for the particular homeownership plan, taking into account such factors as prospective needs for nonroutine maintenance, the homeowners' financial resources, and any special factors that may aggravate or mitigate the need for such a reserve.

§906.12 Purchase prices and financing.

(a) *Below-market terms.* To ensure affordability by eligible purchasers, by the standard adopted under §906.8(e), a homeownership plan may provide for below-market purchase prices or below-market financing, 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 a group of potential purchasers).

(b) *Types of financing.* Any type of private or public financing may be used (e.g., conventional, Federal Housing Administration (FHA), Department of Veterans Affairs (VA), Farmers' Home Administration (FmHA), or a State or local program). A PHA may finance or assist in financing purchase by any methods it may choose, such as purchase-money mortgages, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§906.13 Protection against fraud and abuse.

A homeownership plan shall include appropriate protections against any risks of fraud or abuse that are presented by the particular plan, such as

collusive purchase for the benefit of nonresidents, extended use of the dwelling by the purchaser as rental property, or collusive sale that would circumvent the resale profit limitation of §906.14.

§906.14 Limitation on resale profit.

(a) *General.* If a dwelling is sold to the initial purchaser for less than fair market value, the homeownership plan shall provide for appropriate measures to preclude realization by the initial purchaser of windfall profit on resale. "Windfall profit" means all or a portion of the resale proceeds attributable to the purchase price discount (the fair market value at date of purchase from the PHA less the below-market purchase price), as determined by one of the methods described in paragraphs (b) through (d) of this section. Subject to that requirement, however, purchasers should be permitted to retain any resale profit attributable to appreciation in value after purchase (or a portion of such profit under a limited or shared equity arrangement), along with any portion of the resale profit that is fairly attributable to improvements made by them after purchase.

(b) *Promissory note method.* Where there is potential for a windfall profit because the dwelling unit is sold to the initial purchaser for less than fair market value, without a commensurate limited or shared equity restriction, the initial purchaser shall execute a promissory note, payable to the PHA, along with a mortgage securing the obligation of the note, on the following terms and conditions:

(1) The principal amount of indebtedness shall be the lesser of:

(i) The purchase price discount, as determined by the definition in paragraph (a) of this section and stated in the note as a dollar amount; or

(ii) The net resale profit, in an amount to be determined upon resale by a formula stated in the note. That formula shall define net resale profit as the amount by which the gross resale price exceeds the sum of:

- (A) The discounted purchase price;
- (B) Reasonable sale costs charged to the initial purchaser upon resale; and

(C) Any increase in the value of the property that is attributable to improvements paid for or performed by the initial purchaser during tenure as a homeowner.

(2) At the option of the PHA, the note may provide for automatic reduction of the principal amount over a specified period of ownership while the property is used as the purchaser's family residence, resulting in total forgiveness of the indebtedness over a period of not less than five years from the date of conveyance, in annual increments of not more than 20 percent. This does not require a PHA's plan to provide for any such reduction at all, or preclude it from specifying terms that are less generous to the purchaser than those stated in the foregoing sentence.

(3) To preclude collusive resale that would circumvent the intent of this section, the PHA shall (by an appropriate form of title restriction) condition the initial purchaser's right to resell upon approval by the PHA, to be based solely on the PHA's determination that the resale price represents fair market value or a lesser amount that will result in payment to the PHA, under the note, of the full amount of the purchase price discount (subject to any accrued reduction, if provided for by the homeownership plan pursuant to paragraph (b)(2) of this section). If so determined, the PHA shall be obligated to approve the resale.

(4) The PHA may, in its sole discretion, agree to subordination of the mortgage that secures the promissory note, in favor of an additional lien granted by the purchaser as security for a loan for home improvements or other purposes approved by the PHA.

(c) *Limited equity method.* As a second option, the requirement of this section may be satisfied by an appropriate form of limited equity arrangement, restricting the amount of net resale profit that may be realized by the seller (the initial purchaser and successive purchasers over a period prescribed by the homeownership plan) to the sum of:

(1) The seller's paid-in equity;

(2) The portion of the resale proceeds attributable to any improvements paid for or performed by the seller during homeownership tenure; and

(3) An allowance for a portion of the property's appreciation in value during homeownership tenure, calculated by a fair and reasonable method specified in the homeownership plan (e.g., according to a price index factor or other measure).

(d) *Third option.* The requirements of this section may be satisfied by any other fair and reasonable arrangement that will accomplish the essential purposes stated in paragraph (a) of this section.

(e) *Appraisal.* Determinations of fair market value under this section shall be made on the basis of appraisal within a reasonable time prior to sale by an independent appraiser, to be selected by the PHA.

§906.15 Use of sale proceeds.

(a) *General authority for use.* Sale proceeds may, after provision for sale and administrative costs that are necessary and reasonable for carrying out the homeownership plan, be retained by the PHA and used for housing assistance to low-income families (as such families are defined under the Act). The term "sale proceeds" includes all payments made by purchasers for credit to the purchase price (e.g., earnest money, downpayments, payments out of the proceeds of mortgage loans, and principal and interest payments under purchase-money mortgages), along with any amounts payable upon resale under §906.14, and interest earned on all such receipts. (Residual receipts, as defined in the ACC, shall not be treated as sale proceeds.)

(b) *Permissible uses.* Sale proceeds may be used for any one or more of the following forms of housing assistance for low-income families, at the discretion of the PHA and as stated in the HUD-approved homeownership plan:

(1) In connection with the homeownership plan from which the funds are derived, for purposes that are justified to ensure the success of the plan and to protect the interests of the homeowners, the PHA and any other entity with responsibility for carrying out the plan. Nonexclusive examples include nonroutine maintenance reserves under §906.11; a reserve for loans to homeowners to prevent or cure default or for other emergency housing

needs; a reserve for any contingent liabilities of the PHA under the homeownership plan (such as PHA guaranty of mortgage loans); and a reserve for PHA repurchase, repair and resale of homes in the event of defaults.

(2) In connection with another HUD-approved homeownership plan under this part, for assistance to purchasers and for reasonable planning and implementation costs.

(3) In connection with a State or local homeownership program for low-income families, as described in the homeownership plan, for assistance to purchasers and for reasonable planning and implementation costs. Under such programs, sales proceeds may be used to construct or acquire additional dwellings for sale to low-income families, or to assist such families in purchasing other dwellings from public or private owners.

(4) In connection with the PHA's other public housing that remains under ACC, for any purposes authorized for the use of operating funds under the ACC and applicable provisions of the Act and Federal regulations, as included in the HUD-approved operating budgets. Examples include maintenance and modernization, augmentation of operating reserves, protective services, and resident services. Such use shall not result in the reduction of the operating subsidy otherwise payable to the PHA under 24 CFR part 990.

(5) In connection with any other type of Federal, State, or local housing program for low-income families, as described in the homeownership plan.

§ 906.16 Replacement housing.

(a) *Replacement requirement.* As a condition for transfer of ownership under a HUD-approved homeownership plan, the PHA must obtain a funding commitment, from HUD or another source, for the replacement of each of the dwellings to be sold under the plan. Replacement housing may be provided by one or any combination of the following methods:

(1) Development by the PHA of additional public housing under 24 CFR part 941 (by new construction or acquisition).

(2) Rehabilitation of vacant public housing owned by the PHA.

(3) Use of five-year, tenant-based certificate or voucher assistance under Section 8 of the Act.

(4) If the homeownership plan is submitted by the PHA for sale to residents through an RMC, resident organization or cooperative association which is otherwise eligible to participate under this part, acquisition of nonpublicly-owned housing units, which the RMC, resident organization or cooperative association will operate as rental housing, comparable to public housing as to term of assistance, housing standards, eligibility, and contribution to rent.

(5) Any other Federal, State, or local housing program that is comparable, as to housing standards, eligibility and contribution to rent, to the programs referred to in paragraphs (a)(1) through (a)(3) of this section, and provides a term of assistance of not less than five years.

(b) *Funding commitments.* Although a HUD funding commitment is required if the replacement housing requirement is to be satisfied through any of the HUD programs listed in paragraph (a) of this section, HUD's approval of a Section 5(h) homeownership plan on the expectation that such a funding commitment will be forthcoming shall not constitute a binding obligation to make such a commitment. Where the requirement is to be satisfied under a State or local program, or a Federal program not administered by HUD, a funding commitment shall be required from the proper authority.

(c) *Use of sale proceeds to fund replacement housing.* Sale proceeds that are generated under the homeownership plan may be used under some of the replacement housing options under paragraph (a) of this section (e.g., rehabilitation of vacant public housing units, or an eligible local program). Where a homeownership plan provides for sale proceeds to be used for replacement housing, HUD approval of the plan and execution of the PHA-HUD implementing agreement shall satisfy the funding commitment requirement of paragraph (a) of this section, with regard to the amount of replacement housing to be funded out of sale proceeds.

(d) *Consistency with current housing needs.* Replacement housing may differ from the dwellings sold under the

homeownership plan, as to unit sizes or family or elderly occupancy, if the PHA determines that such change is consistent with current local housing needs for low-income families.

(e) *Inapplicability to prior plans.* This section shall not apply to homeownership plans that were submitted to HUD under the Section 5(h) Homeownership Program prior to October 1, 1990.

§ 906.17 Records, reports, and audits.

The PHA shall be responsible for the maintenance of records (including sale and financial records, which must include information on the racial and ethnic characteristics of the purchasers) for all activities incident to implementation of the HUD-approved homeownership plan. Until all planned sales of individual dwellings have been completed, the PHA shall submit to HUD annual sales reports, in a form prescribed by HUD. The receipt, retention, and expenditure of the sale proceeds shall be covered in the regular independent audits of the PHA's public housing operations, and any supplementary audits that HUD may find necessary for monitoring. Where another entity is responsible for sale of individual units, pursuant to § 906.7(b), the PHA must ensure that the entity's responsibilities include proper record-keeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership plan, to prepare its reports to HUD, and to meet its audit responsibilities. All books and records shall be subject to inspection and audit by HUD and the General Accounting Office (GAO).

(Approved by the Office of Management and Budget under control number 2577-0201)

§ 906.18 Submission and review of homeownership plan.

Whether to develop and submit a proposed homeownership plan is a matter within the discretion of each PHA. A PHA may initiate a proposal at any time, according to the following procedures:

(a) *Preliminary consultation with HUD staff.* Before submission of a proposed plan, the PHA shall consult informally with the appropriate HUD Field Office

to assess feasibility and the particulars to be addressed by the plan.

(b) *Submission to HUD.* The PHA shall submit the proposed plan, together with supporting documentation, in a format prescribed by HUD, to the appropriate HUD Field Office.

(c) *Conditional approval.* Conditional approval may be given, at HUD discretion, where HUD determines that to be justified. For example, conditional HUD approval might be a necessary precondition for the PHA to obtain the funding commitments required to satisfy the requirements for final HUD approval of a complete homeownership plan. Where conditional approval is granted, HUD will specify the conditions in writing.

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§ 906.19 HUD approval and PHA-HUD implementing agreement.

Upon HUD notification to the PHA that the homeownership plan 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 plan itself, as approved by HUD, shall 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 shall be obligated to carry out the approved homeownership plan and other provisions of the implementing agreement without modification, except with written approval by HUD.

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§ 906.20 Content of homeownership plan.

The homeownership plan must address the following matters, as applicable to the particular factual situation:

(a) *Property description.* A description of the property, including identification of the development and the specific dwellings to be sold.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 906.6, based on the

assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.8. If the homeownership plan allows application for purchase of vacant 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 plan must include an affirmative fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach.

(d) *Sale and financing.* Terms and conditions of sale and financing (see, particularly, §§ 906.11 through 906.14).

(e) *Future consultation with residents.* A plan for consultation with residents during the implementation stage (See § 906.5). If appropriate, this may be combined with the plan for counseling.

(f) *Counseling.* Counseling, training, and technical assistance to be provided in accordance with § 906.9.

(g) *Sale via resident-controlled entity.* If the plan contemplates sale to residents via an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.7(b) have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 906.10.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 906.15.

(j) *Replacement housing.* A replacement housing plan, in accordance with § 906.16.

(k) *Administration.* An administrative plan, including estimated staffing requirements.

(l) *Records, accounts and reports.* A description of the recordkeeping, accounting and reporting procedures to be used, including those required by § 906.17.

(m) *Budget.* A budget estimate, showing the costs of implementing the plan, and the sources of the funds that will be used.

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

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§ 906.21 Supporting documentation.

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

(a) *Property value estimate.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this data is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse pursuant to § 906.13 and of windfall profit upon resale, pursuant to § 906.14. A formal appraisal need not be submitted with the proposed homeownership plan.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 906.6.

(c) *Workability.* A statement demonstrating the practical workability of the plan, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 906.4(a)).

(d) *Commitment and capability.* Information to substantiate the commitment and capability of the PHA and any other entity with substantial responsibilities for implementing the plan.

(e) *Resident planning input.* A description of resident consultation activities carried out pursuant to § 906.5 before submission of the plan, with a summary of the views and recommendations of residents and copies of any written comments that may have been

submitted to the PHA by individual residents and resident organizations, and any other individuals and organizations.

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

(g) *Legal opinion.* An opinion by legal counsel to the PHA, stating that counsel has reviewed the plan and finds it consistent with all applicable requirements of Federal, State, and local law, including regulations as well as statutes. In addition, counsel must identify the major legal requirements that remain to be met in implementing the plan, if approved by HUD as submitted, indicating an opinion about whether those requirements can be met without special problems that may disrupt the timetable or other features contained in the plan.

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

(i) *Other information.* Any other information that may reasonably be required for HUD review of the plan. Except for the PHA-HUD implementing agreement under §906.19, HUD approval is not required for documents to be prepared and used by the PHA in implementing the plan (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the plan. Consequently, those documents need not be submitted as part of the plan or the supporting documentation.

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PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

Sec.

908.101 Purpose.

908.104 Requirements.

908.108 Cost.

908.112 Extension of time.

AUTHORITY: 42 U.S.C. 1437f, 3535(d), 3543, 3544, and 3608a.

SOURCE: 60 FR 11628, Mar. 2, 1995, unless otherwise noted.

§908.101 Purpose.

The purpose of this part is to require Housing Agencies (HAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. This electronically submitted data is required for HUD Forms HUD-50058, Family Report, and HUD-50058-FSS, Family Self-Sufficiency Addendum.

§908.104 Requirements.

(a) *Automated HAs.* Housing agencies that currently use automated software packages to transmit Forms HUD-50058 and HUD-50058-FSS information by tape or diskette to the Department's data processing contractor must convert to telephonic electronic transmission of that data in a HUD specified format by June 30, 1995.

(b) *Nonautomated HAs.* Housing agencies that currently prepare and transmit the HUD-50058 and HUD-50058-FSS information to HUD paper must:

(1) Complete a vendor search and obtain either:

(i) The necessary hardware and software required to develop and maintain an in-house automated data processing system (ADP) used to generate electronic submission of the data for these forms via telephonic network; or