

§ 941.602 Applicability of other requirements.

(a) *Relationship of this subpart to other requirements in 24 CFR part 941.* The requirements contained in this subpart apply only to the development of public housing units using mixed-finance development methods under this subpart and to the operation of public housing units that are owned, or that will be owned, by an owner entity under this subpart. Other requirements for the development of public housing, as set forth in subparts A through E of this part, shall not apply to the development of public housing units pursuant to this subpart, except as may be required by HUD. Applicable requirements include, but shall not be limited to, the following:

(1) Section 941.103 (“Definitions”) (definitions of the following terms only shall apply to this subpart: “Annual Contributions Contract (ACC),” “cooperation agreement,” “design documents,” “reformulation,” and “Total Development Cost (TDC).”

(2) Section 941.201 (“PHA eligibility”) (except that specific requirements governing the cooperation agreement, as set forth in §941.201(c), shall be determined in accordance with this subpart);

(3) Section 941.202 (“Site and neighborhood standards”);

(4) Section 941.203 (“Design and construction standards”);

(5) Section 941.205 (“PHA contracts”) (except that the reference to “development related contracts entered into by the PHA” shall be construed to mean “development related contracts entered into by the PHA or the owner entity”);

(6) Section 941.207 (“Relocation and acquisition”);

(7) Section 941.208 (“Other Federal requirements”);

(8) Section 941.209 (“Audit”);

(9) Section 941.306 (“Maximum development cost”);

(10) Section 941.402 (“Project design and construction”);

(11) Section 941.403 (“Acceptance of work and contract settlement”);

(12) Section 941.404 (“Completion of development”); and

(13) Section 941.501 (“HUD review of PHA performance; sanctions”).

(b) *Procedure in the event of a conflict between requirements.* In the event of a conflict between a requirement contained in this subpart and an applicable requirement set forth in subparts A through E of this part, the requirements of this subpart shall apply, unless HUD otherwise so determines in writing.

(c) *HUD approval.* For purposes of this subpart only, any action or approval that is required to be taken or provided by HUD or by the HUD field office, pursuant to a requirement set forth in subparts A through F of this part, shall be construed to mean that HUD Headquarters shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this subpart.

(d) *Applicability of requirements pursuant to 24 CFR part 85.* The requirements of 24 CFR part 85 are applicable to this subpart, subject to the following two provisos:

(1) A PHA may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including TDC and other applicable cost limitations);

(2) An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.

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§ 941.604 Definitions.

In addition to the definitions set forth in §941.602(a)(1), the following definitions are applicable to this subpart:

Development. A housing facility consisting of public housing units, and that may also consist of non-public housing units, that has been developed,

or that will be developed, using mixed-finance strategies under this subpart.

Mixed-finance. The combined use of publicly and privately financed sources of funds for the development of public housing units under this subpart.

Owner Entity. The entity that will own the public housing units, if the PHA holds less than one hundred percent of the ownership interest; or the lessee under a ground lease from the PHA. The owner entity may be a partnership that includes the PHA.

Participating party. Any person, firm, corporation, or public or private entity that:

(1) Agrees to provide financial or other resources to carry out the approved proposal, or specified activities contained in the proposal; or

(2) Otherwise participates in the development and/or operation of the public housing units and will receive funds derived from HUD with respect to such participation. The term "participating party" includes an owner entity or partner.

Partner. A third party entity with whom the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart, and that has primary responsibility with the PHA for the development of the housing units under the terms of the approved proposal.

Proposal. For purposes of this subpart only, the term "proposal" means a detailed PHA submission of information under § 941.606.

Public Housing Agency (PHA). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing under this part. For purposes of this subpart, the term "PHA" also encompasses any agency or instrumentality of the PHA.

Public housing unit. A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C. 1437g).

§ 941.606 Proposal.

Each proposal shall be prepared in the form prescribed by HUD and shall

include some or all of the following documentation, as deemed necessary by HUD. In determining the amount of information to be submitted by the PHA under this section, HUD shall consider whether the documentation is required for HUD to carry out mandatory statutory or executive order reviews, the quality of the PHA's past performance in implementing development projects under this part, and the PHA's demonstrated administrative capability, as demonstrated by its overall score on the PHMAP. The proposal includes:

(a) *Activities; relationship of participating parties.* An identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA, and the legal and business relationships between the PHA and each of the participating parties.

(b) *Financing.* A detailed description of all financing (including public housing development funds) necessary for the implementation of the proposal, specifying the sources (with respect to each of the proposed categorical uses of all such financing), together with a ten-year operating pro forma for the development (including all underlying assumptions). In addition, the PHA may be required to submit to HUD, for such review and approval as HUD deems necessary, all documents (including applications for financing) relating to the financing of the proposal, including, but not limited to, any loan agreements, notes, mortgages or deeds of trust, use restrictions, operating pro formas relating to the viability of the development, and other agreements or documents pertaining to the financing of the proposal.

(c) *Methodology.* If the PHA proposes to provide public housing operating subsidy for the public housing units, it must submit a methodology acceptable to HUD for the distribution of a portion of its operating subsidy to such units;

(d) *Development description.* A description of the housing, including the number and type (with bedroom count) of public housing units and, if applicable, the number and type of non-public housing units (with bedroom count) to be developed; schematic drawings and