

§ 904.112

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for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer's Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the LHA shall pay such balance to the homebuyer at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the LHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the LHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate

amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

§ 904.112 Operating reserve.

(a) *Purpose of reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the Project, the LHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the Project. The purpose of this reserve is to provide funds for

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures,

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty,

(3) Working capital for payment of a deficit in a homebuyer's NRMR, until such deficit is offset by future monthly payments by the homebuyer or at settlement in the event the homebuyer should purchase, and

(4) A deficit in the operation of the Project for a fiscal year, including a deficit resulting from monthly payments totaling less than the break-even amount for the Project.

(b) *Nonroutine maintenance—common property (Contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see § 904.108 and § 904.109) shall be determined by the LHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be

made only during the period the LHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development in a manner similar to that explained in §904.109(c). When the operating reserve reaches the maximum authorized in paragraph (c) of this section, the break-even (monthly operating expense) computations (see §§904.108 and 904.109) for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Maximum operating reserve.* The maximum operating reserve that may be retained by the LHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers services, LHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see §904.109 above for explanation of various categories of expense).

(d) *Transfer to homeowners association.* The LHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners association (see §§904.118(c) and 904.119(f)). When the homeowners acquire voting control, the homeowners association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners association a portion of the operating reserve then held by the LHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current

maximum operating reserve—see paragraph (c) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: Obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve; and multiply the actual operating reserve balance by this percentage.

(e) *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve this excess shall be applied to the operating deficit of the Project, if any, and any remainder shall be paid to HUD. Following the end of the fiscal year in which the last home has been conveyed by the LHA, the balance of the operating reserve held by the LHA shall be paid to HUD, provided that the aggregate amount of payments by the LHA under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

§ 904.113 Achievement of ownership by initial homebuyer.

(a) *Determination of initial purchase price.* The LHA shall determine the initial purchase price of the home by two basic steps, as follows:

Step 1: The LHA shall take the Estimated Total Development Cost (including the full amount for contingencies as authorized by HUD) of the development as shown in the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management facilities including the land, equipment, and furnishings attributable to such facilities as set forth in the development program for the development. The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

Step 2: The LHA shall apportion the Estimated Total Development Cost for Homebuyers among all the homes in the development. This apportionment shall be made by obtaining an FHA appraisal of each home and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the Homes and the Estimated Total Development Cost for Homebuyers. The adjusted