

financial records) for all activities incident to implementation of the HUD-approved homeownership program. Where a PRE is responsible for the sale of units, the PHA must ensure that the PRE's responsibilities include proper recordkeeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership program and to meet its audit responsibilities. All books and records must be subject to inspection and audit by HUD and the General Accounting Office (GAO). The PHA must report annually to HUD on the progress of each program approved under this part. The PHA must report as part of the Annual Plan process under § 903.7(k) of this title, except for those PHAs under §§ 903.11(c)(1) and (2) of this title who are not required to include information on their public housing homeownership programs in their Annual Plan. Those PHAs must report by providing a description of the homeownership program to HUD, including the cumulative number of units sold.

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

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

§ 906.37 Davis-Bacon and HUD wage rate requirements.

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

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

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

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

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

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

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

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

Subpart E—Program Submission and Approval

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

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

§ 906.39 Contents of a homeownership program.

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

(a) *Method of Sale:* The PHA should indicate how units will be sold, including a description of the exact method of sale, such as, for example, fee simple conveyance, lease-purchase, or sale of a cooperative share. PHAs may sell units

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

(b) *Property description.* (1) If the program involves only financing assistance to the family purchasing the unit, the PHA need not specify property addresses, but it must describe the area(s) in which the assistance is to be used;

(2) If the PHA is selling existing public housing, it must describe the property, including identification of the property by project number, or street address if there is no project number, and the specific dwellings to be sold, with bedroom distribution by size and type broken down by development;

(3) If the PHA is acquiring units with 1937 Act funds to sell under the program, it must comply with the provisions of § 906.40 concerning this element of the program;

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

(d) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.15. If the homeownership program allows application for purchase of units by families who are not presently public housing or Section 8 residents and not already on the PHA's waiting lists for those programs, the program must include an affirmative

fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach, including persons with disabilities;

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

(f) *Consultation with residents and purchasers.* A description of resident input obtained during the resident consultation process required by the PHA Plan under part 903 of this title. If the PHA is one whose Plan does not require information regarding homeownership under § 903.11(b)(1) of this title, the PHA must consult with the Resident Advisory Board or Boards regarding the homeownership plan, and provide the information required in this paragraph;

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

(h) *Sale via PRE.* If the program contemplates sale to residents by an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.19 have been met or will be met in a timely fashion;

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

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

(k) *Records, accounts, and reports.* A description of the recordkeeping, accounting, and reporting procedures to be used, including those required by § 906.33;

(l) *Budget.* A budget estimate, showing any rehabilitation or repair cost, any financing assistance, and the costs of implementing the program, and the sources of the funds that will be used;

(m) *Timetable.* An estimated timetable for the major steps required to carry out the program;

(n) *Deed restrictions.* A deed restriction or covenant running with the land that will assure to HUD's satisfaction

that the requirements of §§ 906.27 and 906.15(b) are met.

§ 906.40 Supporting documentation.

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

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

(1) Organizational documents of the PRE;

(2) Regulatory and operating agreement between the PHA and PRE regarding the provision of operating subsidy and the operation of the public housing units in accordance with all applicable public housing requirements;

(3) Management agreement and plan;

(4) Financing documents, if any;

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

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

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

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

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

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

(c) *Feasibility.* A statement demonstrating the practical feasibility of the program, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, accessibility costs, if applicable, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who

are expected to be interested in purchase (*See* § 906.45(a));

(d) *PHA performance in homeownership.* A statement of the commitment and capability of the PHA (and any other entity with substantial responsibility for implementing the homeownership program) to successfully carry out the homeownership program. The statement must describe the PHA's (and other entity's) past experience in carrying out homeownership programs for low-income families, and (if applicable) its reasons for considering such programs to have been successful. A PHA that has not previously implemented a homeownership program for low-income families instead must submit a statement describing its experience in carrying out public housing modernization and development projects under part 905 of this title, respectively;

(e) *Nondiscrimination certification.* The PHA's or PRE's certification that it will administer the plan on a 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