

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 906

[Docket No. FR-4504-F-02]

RIN 2577-AC15

Public Housing Homeownership Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule states the requirements and procedures governing a new statutory homeownership program to be administered by public housing agencies (PHAs). Under this rule, a PHA makes public housing dwelling units, public housing developments, and other housing units available for purchase by low-income families as their principal residences.

DATES: *Effective Date:* April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Dominique Blom, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4138, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 401-8812, ext. 4181 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. The New Section 32 Homeownership Program

Section 536 of the Quality Housing and Work Responsibility Act of 1998 (title V of Public Law 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) amended title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) by adding a new section 32, which authorizes a new public housing homeownership program (section 32 homeownership program). The new homeownership program replaces the public housing agency homeownership program that was authorized under section 5(h) of the 1937 Act (the 5(h) homeownership program or 5(h) program). Section 518 of the QHWRA repealed the section 5(h) homeownership program, and section 566 of the QHWRA added a new section 5(h) that deals with an unrelated matter.

II. The 5(h) Program

The regulations implementing the former 5(h) homeownership program are found at 24 CFR part 906 (April 1,

2002). The 5(h) program generally was a program, similar to the section 32 program, under which PHAs could sell public housing units subject to Annual Contributions Contract (ACC) to public housing and section 8 residents for purposes of homeownership (*see* §§ 906.2, 906.3).

The 5(h) program required submission of a homeownership plan with specified contents for HUD review and approval, including a property description, standards to be used for selection of purchasers, proposed conditions of sale, and other matters. In addition to the homeownership plan, the 5(h) program required various forms of supporting documentation.

The 5(h) program permitted "any appropriate" method of sale, but was not specific in terms of what those methods might be. As examples, the program cited fee-simple conveyance of individual dwellings, or conversion of buildings to cooperative or condominium use. The program permitted "indirect sale," that is, sale to an intermediary entity for sale to residents.

Eligible purchasers in the 5(h) program were residents of public housing, or tenants assisted under section 8 who have been lawful residents of their units for some minimum time specified in the homeownership plan, but in any case not less than 30 days prior to conveyance of title of the dwelling to be purchased. In 24 CFR 906.8(e) (April 1, 2002), the 5(h) rule established affordability standards to ensure that residents are capable of assuming the financial obligations of homeownership.

The 5(h) program required a plan for replacement of housing sold. (*See* 24 CFR 906.16 April 1, 2002.) This requirement is based on section 18 of the 1937 Act, 42 U.S.C. 1437p, as it existed prior to the effective date of the QHWRA, which required some form of replacement for every disposed unit. However, the replacement housing requirement was removed from section 18 by the QHWRA, and so is not found in this rule implementing the section 32 homeownership program.

The 5(h) program contained a number of other provisions necessary to the operation of the program, such as restrictions on resale profits to avoid windfalls, civil rights certifications, and provisions for HUD review and approval of applications to participate in the program. The proposed and final section 32 program rules retain many of these requirements and vary others, as described in sections III and IV of this preamble.

III. The September 14, 1999 Proposed Rule

On September 14, 1999, HUD published for public comment a notice of proposed rulemaking (NPRM) to implement the section 32 Homeownership program. That rulemaking proposed amendments to the 5(h) homeownership program as implemented in 24 CFR part 906.

The NPRM proposed reorganizing 24 CFR part 906 into five subparts according to the subjects covered: A general statement of the program; basic program requirements; purchaser requirements; program administration; and program submission and approval. The new statutory homeownership requirements were proposed to be integrated with the 5(h) requirements that HUD determined appropriate to retain, such as proposed § 906.39, which is based upon § 906.20 of the 5(h) rule and covers what must be contained in a homeownership program.

The 5(h) statute and rule provided for sales only to the lower-income tenants of a PHA, including section 8 assistance recipients (although the 5(h) program allowed for income-eligible non-tenants to meet the residency requirement in order to purchase a unit). In contrast, section 32 provides for three categories of eligible purchasers: (1) Low-income families assisted by a PHA; (2) other low-income families; and (3) entities formed to purchase units for resale to low-income families. Therefore, the NPRM proposed that low-income families and purchase and resale entities (PREs) would be eligible to purchase units under the program (*see* § 906.11 of the NPRM, 64 FR 49935). The NPRM also proposed, at § 906.15, that a family purchasing a property under a PHA homeownership program would have to be a low-income family, as defined in section 3 of the 1937 Act, at the time the contract to purchase the property is executed. The only exception to this requirement would be in the case of a public housing family currently residing in a unit to be sold, exercising their right of first refusal. Such families would have a right of first refusal even if they are over the income limit at the time their unit is offered for sale.

The NPRM proposed expanding the definitions of units that may be sold. Whole existing § 906.3 provides for sales of all or a portion of a public housing project, the NPRM notified the public that, in addition to public housing units, other units owned, operated, assisted, or acquired for homeownership sale that have received the benefit of 1937 Act funds could also