

be sold (*see* proposed § 906.5(a), 64 FR 49934.)

As in the 5(h) rule, the NPRM proposed a resident consultation requirement. In the NPRM, resident consultation generally would occur through the PHA plan process under 24 CFR part 903 (*see* § 906.39(e)).

As to permitted methods of sale, § 906.25 of the NPRM followed closely the section 32 statute at paragraph (h) (42 U.S.C. 1437z-4(h)), stating that “any homeownership interest” that the PHA considers appropriate may be transferred to the purchasing family. Specific methods of sale listed include, but are not limited to: Fee simple; a condominium interest; an interest in a limited-dividend cooperative; or a shared appreciation interest with PHA financing.

The NPRM proposed expanding the definition of eligible purchasers to low-income families, rather than tenants receiving assistance as provided in the 5(h) rule at § 906.8. This proposed broader eligibility would follow the section 32 statute, (42 U.S.C. 1437z-4(c)). In addition, entities formed to purchase units and resell them to eligible purchasers, known in the NPRM as purchase and resale entities, would be eligible (*see* 42 U.S.C. 1437z-4(c)(1) and § 906.11 of the NPRM (64 FR 49935)). The NPRM suggested specific requirements incumbent upon PREs in § 906.19 (64 FR 49935). These proposed requirements would include financial and administrative capacity requirements, protection against fraud and abuse, and requirements that the Purchase and Resale Entity (PRE) fulfill the program goals of selling properties only to eligible families, enforced by deed and title restrictions. Also, the NPRM proposed requiring PREs to sell properties they acquire within five years, or transfer ownership to the PHA, as the statute requires (*see* 42 U.S.C. 1437z-4(c)(2).)

The NPRM proposed to retain the 5(h) program’s financial capacity requirements found at 24 CFR 906.8(e). (*See* proposed § 906.15(c) at 64 FR 49935.) In addition, the NPRM, following the statute, proposed requiring purchasing families to make a downpayment. The downpayment could consist of grant amounts, gifts from relatives, and other contributions for the downpayment, with the exception that an amount equal to one percent of the purchase price would be required to come from the family’s own resources. (*See* 42 U.S.C. 1437z-4(g) and proposed § 906.15(d), 64 FR 49935.)

An important difference between the 5(h) program on the one hand, and section 32 and the NPRM on the other,

is that, where the 5(h) program prohibits displacement of in-place residents in order to make a sale, the section 32 program and NPRM would clearly permit such displacement subject to specified protections for the in-place resident. The NPRM proposed giving a right of first refusal to the resident or residents occupying a public housing unit to be sold. (*See* 42 U.S.C. 1437z-4(d) and proposed § 906.13(a) at 64 FR 49935.) Nonpurchasing residents of units other than public housing units would not have a right of first refusal, but would be entitled to Uniform Relocation Act (URA) benefits. (*See* proposed § 906.24, 64 FR 49936.) Public housing residents who do not exercise their right of first refusal and whose unit is sold would be statutorily entitled to benefits, including: 90 days advance notice prior to the displacement date; an offer of comparable housing that meets housing quality standards and is located in an area that is generally not less desirable than the location of the displacee’s original housing; any necessary counseling; and payment of actual and reasonable moving expenses. (*See* 42 U.S.C. 1437z-4(e) and proposed § 906.23 at 64 FR 49936.) The only exception to the 90-day advance notice requirement would occur in the case where the unit presents an imminent threat to health and safety. This could occur, for example, in the case of a unit with a dangerous condition that the PHA plans to repair prior to selling the unit. In such a case, the NPRM proposed that the PHA could move the resident to another, safer unit without 90 days advance notice. (*See* 42 U.S.C. 1437z-4(e)(1) and proposed § 906.23 at 64 FR 49936.)

Another difference between the 5(h) and proposed section 32 programs is the treatment of profits on resale of a homeownership unit by the low-income family who originally purchased the unit under the program to a buyer on the open market. Where 5(h) was strict in preventing a windfall profit, that is, a profit based not on market appreciation but on a discount or government assistance provided to the purchaser, section 32 would provide a PHA with more flexibility in the recapture of assistance amounts on resale. A homeownership program under section 32 “shall provide such limitations on resale as the (public housing) agency considers appropriate * * * for the agency to recapture” all or a portion of the economic gain from resale in the first 5 years, and after that, only the gain attributable to assistance provided to the purchaser. (*See* 42 U.S.C. 1437z-4(i) and proposed § 906.27

at 64 FR 49936.) Therefore, a PHA would have broad flexibility in deciding how much to recapture; in HUD’s view, “a portion” of the gain could include an amount that is *de minimis*, or even zero.

The NPRM, like the current 5(h) rule codified at 24 CFR 906.20, proposed specific required contents of a homeownership plan. (*See* proposed § 906.39.) The 5(h) rule and NPRM required or would require: A property description; a plan for any required repair or rehabilitation; standards for purchaser eligibility and selection; terms and conditions of sale and financing; information about resident consultation; counseling, training and technical assistance to be provided; a plan for nonpurchasing residents (with the important difference that under 5(h), such a resident may elect to move or stay in place as a tenant, and under section 32, the resident can be required to move if given certain protections stated in proposed § 906.23 at 64 FR 49936); an estimate of the sales proceeds and explanation of how they will be used; an administrative plan; records and reports; and a budget and timetable. The NPRM proposed to eliminate the requirement for a replacement housing plan, as replacement housing is no longer required by law. The NPRM also proposed a requirement that, in cases where sales will be through a PRE, the plan contain a description of the PRE’s responsibilities and information demonstrating that regulatory requirements applicable to a PRE have been met.

The supporting documentation that the NPRM proposed to be required (proposed § 906.41 at 64 FR 49937) would be quite similar to the documentation required in the 5(h) program rule at 24 CFR 906.21. The main difference would be in the documentation of capacity to perform. Where the 5(h) program required broadly “information to substantiate the commitment and capability of the PHA and any other entity with substantial responsibilities for implementing the plan,” the NPRM would be more specific in its proposed documentary requirements in the analogous § 906.41(d) (64 FR 49938). As proposed, the PHA would be required to include a description of its past experience in carrying out low-income homeownership programs, and its reasons for considering such programs to have been successful. If the PHA has not carried out low-income homeownership programs the PHA could substitute documentation of experience in public housing modernization and development projects.