

As to HUD review and approval of homeownership plans, the NPRM proposed to include additional criteria to the 5(h) approval criteria of legality, workability, and clear and complete documentation. (See 24 CFR 906.4.) In addition to these review criteria, under the NPRM, HUD would consider the PHA's performance in homeownership based on the experience criteria in proposed § 906.41(d) at 64 FR 49938.

IV. This Final Rule

A. Brief overview of major changes in the final rule.

- Financial capacity requirements have been adopted from the 5(h) program, requiring a family to have sufficient income that their monthly housing payments do not exceed 35 percent of their income and any assistance that will be available for such payments.

- On resale by the homeownership family, PHAs are given more flexibility in determining how much of the profit attributable to assistance to recapture.

- Below-market sales are permitted to ensure that eligible, low-income buyers have adequate homeownership opportunities.

- Provisions are added explicitly permitting lease-purchase arrangements, and regulating the disposition of lease income set aside for purchase, if no purchase occurs.

- The final rule is more flexible in allowing the development of non-public housing units to be sold to the PHA and used for homeownership. Rather than trying to prevent this, the final rule permits such development as long as the development complies with Davis-Bacon wage requirements and applicable environmental requirements.

- The environmental review procedure is made somewhat more flexible to allow for cases where all units to be sold may not be identified and fully reviewed prior to submission of the homeownership program. However, this flexibility does not affect the requirement that all sites or units must be approved for the program, and the PHA cannot commit to purchase or sell such sites or units, or commit funds for their construction and rehabilitation, until all applicable environmental requirements have been satisfied.

- Section 8(y) assistance may now be used in conjunction with a homeownership program under this rule.

B. Detailed Discussion of the Final Rule

Many of the 5(h) program requirements in part 906 were retained in this final rule, based on legislative

indications that Congress based section 32 largely on HUD's part 906 regulations, and that Congress regarded favorably HUD's detailed implementation of section 5(h), as in effect before the enactment of the QHWRRA. However, certain changes were made.

In response to a public comment, a clarifying amendment was made to proposed § 906.3(b) regarding whether a part of a prior existing homeownership program can be converted to a program under this rule. In response to two comments, HUD made a minor amendment to proposed § 906.25 to clarify that the list of ownership interests that may be conveyed is not exclusive.

HUD has made a technical change to the section titles, removing the question and answer formatting, and has provided a more accurate description of the lead paint requirements in § 906.7(a), by cross-referencing to subparts A, B, L and R of the Lead Safe Housing regulations at 24 CFR part 35. Similarly, in §§ 906.5 and 906.7, HUD has more precisely described the accessibility requirements of 24 CFR part 8 as they apply to units sold under this program. These changes simply describe existing legal obligations and are not substantive changes in the rule.

HUD has made some substantive changes as well in response to comments. HUD has accepted comments that the financial capacity guidance from HUD's 5(h) program regulations be included in this new homeownership regulation. Accordingly, HUD has added § 906.15(c)(1), a financial capacity requirement parallel to 24 CFR 906.8(e)(1) (as of April 1, 2002). Also, § 906.15(a) is revised to clarify that a family in-place in public housing exercising its right of first refusal is eligible to purchase the unit regardless of the low-income requirement. This revision reflects the requirement in 42 U.S.C. 1437z-4(d) has an unqualified requirement that families occupying a public housing unit be given a right of first refusal for their unit.

HUD has clarified the right of first refusal provision at § 906.13(a) to include the case where the PRE sells the unit. However, it should be understood that in the case of a sale by the PRE, the right of first refusal only pertains if the resident was originally occupying the unit as a public housing resident at the time the PHA transferred the unit to the PRE for the purpose of resale to lower-income families.

HUD has revised § 906.27, "Limitations applicable to net proceeds on the sale of a property acquired

through a homeownership program," to more closely adhere to the statute. The statute gives PHAs the authority to determine the amount of net proceeds to recapture, including amounts of assistance, as well as to determine the factors to be used in making the recapture decision. The rule now has a similar provision. In addition, HUD has added subsections defining certain terms used in § 906.27, and clarifying that below-market financing, upon resale, is not counted when determining appreciation for recapture purposes under § 906.27, although such financing may be considered assistance in other contexts.

A new § 906.29 has been added, making it clear that below-market sales are permitted in order to ensure that eligible, low-income buyers have adequate homeownership opportunities. Such sales may be financed with below-market financing. A PHA may assist with purchases by providing second mortgages, including "soft" non-cash second mortgages, as well as other financing methods. Section 906.31 discusses the uses a PHA is permitted to make of the net proceeds of homeownership sales, after payment of the costs of sales. Generally, under § 906.31(a), a PHA may use the proceeds for "purposes related to low-income housing and in accordance with its PHA plan." If the PHA also uses section 8 assistance under the provisions of section 8(y) of the 1937 Act to provide homeownership opportunities, proceeds from sales may be used for expenses in the 8(y) program, such as providing counseling and down payment assistance. HUD encourages such uses to promote homeownership. New §§ 906.31(c) and (d) have been added to provide for situations where the Purchase and Resale Entity (PRE) fails to sell a unit within the statutorily allowed time (five years), and the unit reverts to the PHA. These sections are required to provide guidance in situations that may arise during the implementation of this program.

Section 906.35 has been revised to clarify what was already implicit, that the provisions of section 18 of the 1937 Act do not govern disposition for homeownership purposes under this part, including to a PRE for resale to a low-income family.

Revisions have been made to the required contents of a homeownership program in § 906.39. In response to comment, HUD has added provisions permitting lease-purchase arrangements (see § 906.39(a)). A lease-purchase arrangement generally provides that a portion of the tenant's rent be set aside for the eventual purchase of the unit. As