

a consequence of allowing for lease-purchases, HUD had to further determine what would happen to the amount set aside if no purchase occurred. Section 906.39(a) provides that in such a situation, the set aside amount that represents a portion of the rent would go to the PHA; otherwise, the tenant would in effect be getting an additional rental subsidy. Of course, if the tenant has placed additional amounts in excess of rent in the account out of his or her own funds, those would revert to the tenant.

In response to public comments, HUD has amended the NPRM to require PHAs selling units to include in their program descriptions a description of the exact method or methods of conveyance to be used (see § 906.39(a)). In addition, in response to comments as to whether a leasehold interest is the kind of interest that can be transferred in a homeownership program, the rule clarifies that lease with option to purchase is such an interest. However, a traditional leasehold is not considered a type of ownership interest.

A new § 906.39(n) has been added to require a deed restriction or restrictive covenant to enforce the primary residence requirement and the requirement that the PHA have a recapture policy for resales where there is gain from appreciation. This section creates no new substantive requirements, but provides for continuing enforceability of an already existing requirement.

Proposed § 906.41 on supporting documentation has been redesignated as § 906.40 and revised. Section 906.40(a) relates specifically to sale to a PRE, and requires material specifically relevant to that situation. Section 906.40(b)–906.40(i) contains the general supporting documentation requirements from the NPRM. Proposed § 906.40(a) (the requirement of a property value estimate) is removed. This requirement related to proposed § 906.27, in which stricter recapture provisions were contemplated. Since, in response to comments, HUD is making recapture of proceeds on resale discretionary, this requirement for a property value estimate is no longer needed.

In the case where the PRE expects to operate the unit as public housing and the unit receives operating subsidy, the PHA must submit, along with its homeownership plan, certain information similar to that submitted in a mixed-finance development where both private funds and HUD funds are involved, and must comply with all rules and regulations regarding operation of public housing units. The information to be submitted in this case

is specified in § 906.40(a), and includes information regarding the provision of operating subsidy for the unit or units while owned by the PRE, amending the ACC governing the units, and a covenant running with the land that the units will be operated in accordance with public housing laws and regulations.

Proposed § 906.40, requirements applicable to acquisition of non-public housing, has been redesignated as § 906.41 and revised. This final rule revises the certification requirement of proposed § 906.40(a)(2), relating to non-public housing units acquired by the PHA for homeownership purposes (see § 906.41(a)(2)). The NPRM would have attempted to restrict non-public housing properties from being developed privately with the intent that they be sold to the PHA. HUD now believes that such a provision would not only be difficult to police but might unduly restrict homeownership opportunities. HUD is only concerned that such units be developed under appropriate conditions. Therefore, in the final rule, § 906.41(a)(2) requires the developer, which developed units under an agreement providing that they would be sold to the PHA, to certify that the units were developed according to Davis-Bacon wage rate requirements and applicable environmental requirements. Section 906.41(a)(8) of the final rule adds a requirement for a market analysis of the potential market for the homeownership units. This requirement will assist HUD in determining the program's feasibility under § 906.45(a).

The final rule revises § 906.45(b) to be consistent with § 906.40(f). Thus, the HUD review criteria in § 906.45 now include a certification of counsel for the PHA that the program meets legal requirements, rather than simply a general statement that the program must meet legal requirements.

HUD has revised proposed §§ 906.47 and 906.49 to clarify the intent that properties to be sold may be identified and subject to environmental reviews after the homeownership program is conditionally approved by HUD, rather than requiring the PHA to identify and fully review all properties beforehand. However, no specific sites or units can be finally approved for the homeownership 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. HUD's regulations at 24 CFR 50.3(h) of this title provide for this possibility in the case where HUD performs the environmental review, which is reflected in the rule in order

to make implementation of a homeownership program more efficient. In cases where a responsible entity performs the review under 24 CFR part 58, HUD believes that a similar approach is warranted. The environmental provisions in § 906.47 have also been revised to clarify which environmental procedures apply for different situations that may arise under this program.

HUD has decided to allow homeownership assistance under section 8(y) of the 1937 Act, 42 U.S.C. 1437f(y) (the section 8(y) program or section 8(y) assistance), to be used in conjunction with a homeownership program pursuant to this rule. Accordingly, amendments have been made throughout this final rule where necessary to specifically allow such use of section 8(y) assistance. Section 906.5(b)(3) includes section 8(y) assistance among the assistance that a PHA may provide to a family purchasing a unit under the section 32 program. Such a family must meet the requirements of both programs, and the section 8(y) assistance must be provided under the 8(y) program rules. Section 906.7(b) specifies that a unit receiving such assistance must be an eligible unit for purposes of the section 8(y) implementing regulations at 24 CFR part 982, subpart M. If section 8(y) assistance is to be provided, a certificate of compliance with the 8(y) program is among the required supporting documentation in § 906.40 (see § 906.40(h)).

The section 32 program provides for the participation of purchase and resale entities (PREs), who may, under the requirements of § 906.19, purchase units for later resale to eligible low-income families. PREs may be, for example, non-profit housing organizations, community development corporations (CDCs), and private developers involved with public housing mixed-finance transactions that would administer 5-year lease-purchase programs.

Finally, in § 906.19(b)(7) and in § 906.40(e), which are sections referencing civil rights obligations, HUD has included cross-references to 24 CFR 5.105(a), which is the HUD regulation that lists applicable civil rights requirements.

Other specific issues have been addressed in responses to public comments, which are summarized below.

V. Public Comments on the NPRM

The NPRM, in addition to seeking comments on the rule generally, invited comments on whether HUD should specify underwriting standards or the