

*Comment:* Four commenters suggested changing or eliminating the down payment requirement in proposed § 906.15(c).

A. Two commenters stated that the down payment requirement of 1 percent should be calculated based on the mortgage amount, rather than the purchase price.

*HUD Response.* The statute explicitly directs that the family must contribute not less than 1 percent of the purchase price from its own resources. (See 42 U.S.C. 1437z-4(g)(2)). Therefore, HUD has made no change as a result of these comments.

B. One commenter stated that the down payment requirement could reduce the number of potential home buyers and should be determined at the local level, and another commenter stated that it should be removed because “it is too difficult to enforce.”

*HUD Response.* In addition to the fact that the down payment requirement is statutory, HUD disagrees with the premise of the comment. HUD believes that there are sufficient mechanisms built into the mortgage process, the recordkeeping and audit requirements of § 906.33, and the requirement under § 906.40 to submit supporting documentation, including documentation of the financing, to reasonably ensure compliance with the requirement.

*Comment:* Ten commenters opposed the requirement in proposed § 906.15(a) that families purchasing units in the program be low-income families. These commenters recommended that the final rule adopt the eligibility requirements of the 5(h) program. The commenters’ reasons included: The restriction would disqualify families who have participated in Family Self-Sufficiency and other programs designed to raise their incomes; if higher-income residents could purchase units, the PHA could make public housing units available to lower-income families who truly need them; and the limitation might conflict with the ceiling rent option.

*HUD Response.* The statute establishes the requirement that only low-income families and PREs are eligible to purchase units through the program. (See 42 U.S.C. 1437z-4(c)(1).) Therefore, HUD has made no change as a result of this comment.

*Comment:* Two commenters stated that proposed § 906.15(c) should be more specific as to financial capacity requirements for purchasing families. One of these commenters stated that § 906.8(e)(1) of the current 5(h) homeownership regulations in this title should be retained. That section

provides that “[o]n an average monthly estimate, the applicant’s payments for mortgage principal and interest, plus insurance, real estate taxes, utilities and other recurring homeownership costs . . . [must] not exceed . . . 35 percent of the applicant’s adjusted income,” taking into account any subsidy that will be available to the applicant for such payments. The other commenter stated that the final rule should provide guidance to PHAs on establishing an affordability ratio based on various homeownership costs, including factors to be taken into account, methods for calculating affordability and maximum percentages.

*HUD Response.* The statute does not prohibit HUD from setting financial capacity guidance. HUD agrees that the guidance provided in the 5(h) regulations was reasonable and workable in practice, in that it set a baseline standard to insure that PHAs sell units to families that can afford the debt burden involved in owning them. Such a guideline will help to insure that the program is successful in the long term. Therefore, HUD has integrated the financial capacity rule from the 5(h) regulations into the final rule. See 24 CFR 906.15(c).

*Comment:* Two commenters stated that the requirement of proposed § 906.15(b) that the dwelling unit sold to a family must be used as the principal residence of the family fails to take into account the possibility that a family may purchase a duplex and rent out the second unit.

*HUD Response.* The statute requires that units be purchased “for use only as principal residences.” (See 42 U.S.C. 1437z-4(a).) In addition, a PHA may only provide assistance to families under the statute to assist them in purchasing a principal residence. (See 42 U.S.C. 1437z-4(k).) Therefore, the statute precludes the type of duplex sales suggested by the comment, and the rule retains this requirement and makes it enforceable through a deed restriction or covenant running with the land. (See 24 CFR 906.39(n).)

*Comment:* Two commenters questioned provisions relating to PREs in proposed § 906.19.

A. The commenters suggested that the final rule should provide for the lifting of the deed restriction required in proposed § 906.19(c) upon the resale by the PRE to the low-income family to prevent encumbering the purchasing family.

*HUD Response.* The specific deed restriction to which this comment refers is an encumbrance only on the PRE’s title, not that of the subsequent purchasing family (although it should

be kept in mind that there are continuing restrictions on resale by the family under section 32(i), 42 U.S.C. 1437z-4(i)). HUD has made no changes as a result of this comment.

B. The commenters requested a provision for a waiver if the PRE cannot sell a unit “due to a condition that is outside the control of the PRE” of the requirement in proposed § 906.19(d) that the PRE agree to transfer ownership of a unit to the PHA if it fails to resell the unit under the program within 5 years.

*HUD Response.* The statute requires that a PRE “shall sell” units within 5 years from the date of its acquisition of the units (see 42 U.S.C. 1437z-4(c)(2)). Thus, HUD has no leeway to extend this time limit. By requiring a reversion if the PRE violates this statutory requirement, HUD has chosen what it believes to be the best means available to enforce this requirement. Therefore, HUD has made no changes as a result of this comment.

C. The commenters asked that the final rule clarify whether a unit that is transferred to a PRE retains its ACC contract subsidy.

*HUD Response.* Proposed § 906.9(b) states that, upon sale, HUD will execute a release of the title restrictions imposed by the ACC and the property will no longer be subject to the ACC. On its face, this proposed language applied to all sales, including to PREs. This is true if the PRE operates the property as non-public housing. However, if the transfer takes place in accordance with regulatory requirements for maintaining the unit as public housing, and if the PRE operates the units as public housing during the interim period before final sale, it would be subject to requirements of the 1937 Act, including that the unit be sold to low-income families, that Davis-Bacon wage requirements apply to work such as repair, rehabilitation, or modification for the purposes of accessibility, that HUD-determined wage rates apply to routine and nonroutine maintenance, and that the unit be operated in accordance with public housing rules and requirements. This final rule amends §§ 906.9 to specify that the release applies to PREs operating the units as non-public housing.

*Comment:* Two commenters raised issues regarding the protections for non-purchasing residents.

A. Proposed § 906.23 provides, as one of the protections for residents who are displaced because of a sale under the program, that the residents will receive counseling regarding their rights to comparable housing. “Comparable housing” includes housing that meets