

housing quality standards. One commenter requested clarification regarding the relationship between housing quality standards and the HUD physical requirements applicable to housing units. The same commenter stated that local code requirements and physical requirements for public housing may be inconsistent.

**HUD Response.** In HUD's regulations, housing quality standards generally refer to the standards for decent, safe, and sanitary housing in good repair. These standards are well described in HUD's regulations (*see* 24 CFR 982.401). HUD does not believe that further clarification of the term in this rule is necessary.

As to the comment regarding inconsistency between physical requirements for public housing and local code requirements, proposed § 906.7 clarifies that relationship.

B. One commenter suggested that the URA protection granted by proposed § 906.24 to residents of non-public housing who are displaced by a sale under the program, be extended to public housing residents.

**HUD Response.** Section 32 of the U.S. Housing Act provides specifically for protections for non-purchasing public housing residents, including relocation assistance. (*See* 42 U.S.C. 1437z-4(e).) HUD believes that Congress intended for these protections exclusively to apply to the relocation of non-purchasing public housing residents, rather than the URA, and so has not adopted the suggested change. Non-public housing residents displaced by a sale are entitled to protections under the URA.

**Comment:** Three commenters suggested changes to proposed § 906.27, "Limitations applicable to net proceeds on the sale of a property acquired through a homeownership program." One commenter argued that the rule should not specify the time period during which appreciation may be recaptured by the PHA to help "curb speculation and . . . enable the state to preserve and recover a fair return on the state's resources upon resale, transfer, and rental of the property." Another commenter stated that the required resale period should be increased to 10 years "to secure a reduction in real estate taxes to assist in the affordability of housing" for new homeowners. A third commenter stated that recapturing the difference between the cost of construction and the sale price is a disincentive to potential purchasers.

**HUD Response.** Regarding the first two comments on the time period for resale with recapture, the statute sets 5 years as the time period during which the PHA may recapture some or all of

the economic gain derived from such resale. Since the time period is statutory, HUD cannot alter or eliminate the time period. As to the third of these comments, the statute provides for recapture; however, the PHA need not recapture all the net proceeds, but may recapture a portion that it deems appropriate based on the factors it considers. These factors may include such things as the equity contribution of the purchasing family and the time elapsed prior to the sale. Also, the rule is now more flexible in this area since it has been revised to permit recapture of "all or a portion" of assistance provided.

**Comment:** Two commenters noted that proposed § 906.27(c), which provides for an appraisal by a certified appraiser within 1 month before the resale, does not specify who pays for the appraisal. These commenters requested clarification.

**HUD Response.** HUD has eliminated this requirement from the rule as it has produced unnecessary confusion. Appraisals related to a resale by the family would be governed by the normal rules of the marketplace, under which an appraisal would ordinarily be required by the buyer or buyer's lender. Allocation of the costs of appraisal would follow normal practice.

**Comment:** Two commenters opposed the requirement in proposed § 906.31 that PHAs use proceeds of sales for purposes related to low-income housing, stating that by restricting the use of proceeds in this manner, the PHA would be prohibited from using the proceeds to develop programs for low-income families such as economic development programs, children's activity programs, gang related prevention programs, and scholarship programs.

**HUD Response.** The language in the rule is mandated by the statute (*see* 42 U.S.C. 1437z-4(j)). HUD believes that the phrase "for purposes related to low-income housing" is flexible and would include programs that would assist the residents of low-income housing as long as they are in accordance with the PHA's plan and otherwise lawful. For example, "purposes related to low-income housing" could include purposes related to the section 8(y) homeownership program. HUD has not made any change as a result of this comment.

**Comment:** One commenter asked what Davis-Bacon and HUD wage rate requirements apply to new construction in the program.

**HUD Response.** Section 906.37 is revised to clarify the applicability of Davis-Bacon and HUD wage rates.

Applicability of rates for rehabilitation, repairs, and accessibility modifications performed by, or under contract with, the PHA; new construction of non-public housing units pursuant to a contract for acquisition for use in a homeownership program; and operation, rehabilitation, and repair of units operated as public housing units by a PRE pending sale is specified. Davis-Bacon wage rates are rates not less than the wage rates prevailing in the locality for workers in specified categories, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act, 40 U.S.C. 276a-276a-5. HUD wage rates are rates adopted by HUD pursuant to section 12 of the 1937 Act, 42 U.S.C. 1437j. (*See* 24 CFR 968.110(e).)

**Comment:** Three commenters suggested additions to proposed § 906.39, which sets forth the required components of a homeownership program.

A. Two commenters suggested that the homeownership program should be required to include a description of the method of sale that will be used, such as fee simple, lease-purchase, etc.

**HUD Response.** HUD agrees and has amended the NPRM to so indicate. (*See* 24 CFR 906.39(a).)

B. Proposed § 906.39(c) (final rule § 906.39(d)) requires an affirmative fair housing marketing strategy (AFHM) for families who are not public housing or section 8 residents and are not on the PHA's waiting lists, if such families are eligible for the PHA's homeownership program. One commenter stated that the rule should specify what constitutes an acceptable fair housing marketing strategy.

**HUD Response.** HUD Directive 8025.1 rev-2, *Implementing Affirmative Fair Housing Marketing Requirements*, gives detailed guidelines regarding implementing AFHMs. In addition, each AFHM plan must be tailored to the local situation, and each local situation cannot be adequately addressed through a regulation of general applicability. Finally, PHAs already have experience with AFHM plans in other contexts, and are best positioned to implement appropriate AFHM strategies. Thus, HUD has made no changes as a result of this comment.

**Comment:** Among the documents that proposed § 906.41 requires to be submitted as supporting documentation for the proposed homeownership program is an opinion from the PHA's legal counsel that the proposed program complies with all Federal and local laws and regulations. One commenter suggested that HUD, rather than the