

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 941****[Docket No. FR-3569-I-01]****RIN 2577-AB37****Office of the Assistant Secretary for Public and Indian Housing; Regulatory Reinvention: Streamlining the Public Housing; Development Regulations****AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.**ACTION:** Interim rule.

SUMMARY: This rule amends HUD's regulations for the Public Housing Development program. In an effort to comply with the President's regulatory reform initiatives, this rule streamlines these regulations by eliminating provisions that repeat statutory provisions or are otherwise unnecessary, as well as revising provisions to allow greater flexibility to PHAs in carrying out development programs, allowing them to certify compliance with some requirements. This interim rule will make the Public Housing Development regulations clearer and more concise.

DATES: Effective Date: August 21, 1996, except that §§ 941.101, 941.205, 941.301, 941.303, 941.304, and 941.404 shall not become effective until the OMB approval of the information collections contained in those sections are announced by a separate publication in the Federal Register.

Comments due date: September 20, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXED comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: William J. Flood, Director, Office of Capital Improvements, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-1640 (this is not a toll-free number). For hearing-and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal

Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Information Collection Requirements**

The information collection requirements contained in this rule, as described in § 941.101, are the subject of OMB control numbers 2577-0024, 2577-0033, 2577-0036, and 2577-0039. All of these approval numbers are currently under review, under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501-3520), except for 2577-0036, for which a 90-day extension was granted, effective through 8/31/96. The information collection notices for these requirements were published on April 4, 1996 (61 FR 15081 and 15101) and on May 9, 1996 (61 FR 21202).

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

I. Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the public housing development program can be improved and streamlined by eliminating unnecessary provisions.

Although current funding for public housing development is limited, the regulations for the program are still needed to govern the current pipeline of projects for which funds have been obligated. In addition, current legislation allows modernization funds to be used for developing new units, which requires public housing development regulations for implementation.

Several provisions in the regulations repeat statutory language from the U.S. Housing Act of 1937. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this interim rule removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference.

Several other provisions in the regulations apply to more than one program, and these provisions have been in different subparts. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this interim rule consolidates these duplicative provisions, maintaining appropriate cross-references for the reader's convenience.

Some provisions in the regulations are now obsolete and have been removed. Lastly, some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through guidance or other materials rather than maintain it in the CFR.

The major changes to the rule were made in order to further the Department's determination that newly developed public housing units should be attractive and marketable and should assist PHAs to end the social and economic isolation of low income people and to promote economic independence.

II. Specific changes**A. Expansion of Development Methods**

Language that has limited development methods to the conventional, turnkey, and acquisition methods is being removed, and PHAs are being authorized to use any generally accepted method of development.

Two methods described, in addition to the three authorized in the current regulation, are the force account method and the mixed-finance method (see new § 941.102). With respect to a PHA that proposes to develop public housing units using the force account method, the rule specifies that HUD must determine, before development of a full proposal, that the PHA has the capability to develop successfully the public housing units using the force account method. A PHA using the mixed-finance method must submit and implement its proposal in accordance with subpart F of this part, which deals only with that development method. This expansion of development methods gives more flexibility to PHAs in the development of public housing units.

B. Expansion of Funding Sources

This rule adds reference to the use of modernization funds as a new funding

source for development, under certain circumstances (see new § 941.102(b)). A provision is also added requiring execution of an Annual Contributions Contract to govern the use of federal funds used, including modernization funds (see new § 941.302). Donations are also specifically referenced as a possible funding source for PHA public housing development.

C. Flexibility for Approval of Replacement Housing Sites

This rule (at new § 941.202(c)(2)) specifically authorizes construction of public housing units following demolition of public housing units, on the original site or in the same neighborhood, exempting such construction from the review concerning minority or poverty concentration (that otherwise would be required by § 941.202(c)) if one of several criteria are satisfied:

(1) The number of public housing units to be constructed is no more than 50 percent of the number of units in the original project;

(2) In the case of replacement of a currently occupied project, the number of public housing units being constructed is the minimum number needed to house current residents who want to remain at the site; or

(3) The public housing units being constructed constitute no more than twenty-five units.

The Department believes that addition of these first two criteria is desirable to permit the demolition and reconstruction of replacement units on sites that are readily available, but at lower density levels than the original project. That policy has been endorsed by language in the Fiscal Year 1995 Rescission Act, Pub. L. No. 104-19, 104 Stat. 194, approved July 27, 1995. The inclusion of the third criterion will permit replacement on site where the number of units being demolished is itself small, in which case the Department would not expect that replacement of twenty-five of the units would have an effect of concentrating low-income or minority families in the area.

D. Site Acquisition Requirements

This rule eliminates the "limited proposal" (under existing § 941.404(n)), which has been used by PHAs as an expedited means of acquiring HUD/VA/RTC and certain other scattered site properties. The Department believes that its adoption in this rulemaking of a streamlined procedure for the development of *all* public housing (and not just certain types of housing), renders obsolete the separate limited

proposal procedure. HUD also has added a new, optional provision, at § 941.303, that authorizes a PHA to acquire land on which to construct a project following submission and approval of an abbreviated "site acquisition" proposal. However, HUD must approve all contracts for the purchase of property, regardless of the amount involved or the development method being used.

E. PHA Certifications

PHAs with a satisfactory record of performance are permitted to certify compliance with certain HUD requirements under this rule, in order to reduce the amount of HUD review required (see new § 941.402). For example, a PHA is permitted to certify that the design and construction plans are in accordance with HUD's design and construction standards, and that the bidding procedures are in accordance with Federal procurement requirements.

F. Consolidation of Application and Proposal Provisions

The provisions of Subparts C and D concerning applications and proposals are consolidated into a new Subpart C. Detail in the current regulations on selection of applications is removed, substituting a reference to publication of information pertaining to fund allocation, application deadlines, selection criteria and procedures through publication of a Notice of Funding Availability, should new funding become available (see new §§ 941.301 through 941.306). [Subpart E on project development is consequently redesignated as Subpart D.]

The information sought from PHAs concerning costs at the proposal stage is being modified to request that information about demolition and associated relocation costs be separately identified with respect to a site that is being acquired for public housing and a site of existing public housing. This will allow HUD to make appropriate comparisons with private market development costs.

G. HUD Review of Performance

A new process for HUD review of PHA performance and sanctions for poor performance is added (see new § 941.501), which parallels that being used in the Modernization Program. These new provisions place the emphasis on isolating poor performance and providing technical assistance where it is needed as the initial HUD response. The rule gives HUD authority to establish certain review thresholds through notice of deficiency or corrective action order procedures.

H. Subpart F

Subpart F, which was first authorized in an interim rule published on May 2, 1996 (61 FR 19708) specifies the conditions and procedures for the mixed-finance development method. Since this rule revises many of the sections to which § 941.602 of that rule referred, this rule revises those cross-references. In addition, the Department anticipates making additional changes in subpart F to streamline its provisions further. That action may be taken in a combined final rule issued to conclude the rulemaking initiated by both that interim rule and this interim rule.

III. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. HUD believes that it would be contrary to the public interest to delay the effectiveness of the rule to solicit comment, since it will streamline numerous existing HUD requirements and delegate significant responsibility to PHAs with respect to implementation of their development programs.

Delegation of responsibility to PHAs is fully consistent with the policy and objectives of the United States Housing Act of 1937, as set forth in section 2 of that Act, which states in relevant part: "It is the policy of the United States * * * to assist the several States and their political subdivisions * * * to remedy the acute shortage of decent, safe, and sanitary dwellings for families of lower income and, consistent with the objectives of this Act, to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs * * *." The streamlining changes to the development program are designed primarily to eliminate multiple layers of HUD reviews for those PHAs that HUD believes can develop public housing units without the need for detailed HUD oversight. Troubled PHAs and other PHAs that HUD believes would benefit from more detailed oversight would remain subject to existing HUD review and approval

requirements for their development programs.

By revising the program, in this matter, HUD believes that competent PHAs will be able to more expeditiously develop public housing units and, accordingly, to more efficiently respond to the housing needs of low income families in their jurisdictions. Troubled PHAs and other PHAs that may benefit from more detailed HUD oversight will continue to be subject to existing HUD review and approval requirements for their development programs. HUD believes that this dichotomy in the development process will significantly benefit low-income families.

Although issuing the rule for effect, HUD is soliciting public comment concerning these changes, and the comments will be reviewed for possible future changes to the rule in a final version.

IV. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. HUD believes that this rule will further the public interest since the rule will streamline numerous existing HUD requirements and delegate significant responsibility to PHAs with respect to implementation of their development programs.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. To the extent that

the programmatic changes that will result from this rule will have any effect, they will positively affect the relationship between the Federal Government and State and local governments in that the rule delegates to the PHA (a creature of state law) greater responsibility with respect to implementation of its development program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. The only effect that the rule is likely to have on families is that it may expedite replacement of public housing units that cannot be maintained as decent, safe, and sanitary housing.

Regulatory Review

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this interim rule as a result of that review are clearly identified in the docket file for this interim rule, which is available for public inspection in the HUD's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

List of Subjects in 24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

Accordingly, 24 CFR part 941 is amended as follows:

PART 941—PUBLIC HOUSING DEVELOPMENT

1. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

2. Sections 941.101 and 941.102 are revised to read as follows:

§ 941.101 Purpose and scope.

(a) *Purpose.* The U.S. Housing Act of 1937 (Act), 42 U.S.C. 1437, authorizes HUD to assist public housing agencies (PHAs) with the development and operation of low-income housing projects and financial assistance in the

form of grants (42 U.S.C. 1437c, 1437g, and 1437l). The purpose of the program is to develop units which serve the needs of public housing residents over the long term and have the lowest possible life cycle costs, taking into account future operating and replacement costs, as well as original capital investments.

(b) *Scope.* This part is the regulation under which a PHA develops low-income housing (excluding Indian housing), herein called public housing.

(c) *Approved information collections.* The following sections of this part have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501-3520) and assigned the OMB approval numbers indicated:

Approval No.	Sections
2577-0024 2577-0033	941.304(j). 941.301, 941.303, 941.304 except para. (j), 941.402, 941.606, 941.610.
2577-0036 2577-0039	941.304, except para. (j). 941.205, 941.404.

§ 941.102 Development methods and funding.

(a) *Methods.* A PHA may use any generally accepted method of development including, but not limited to, conventional, turnkey, acquisition with or without rehabilitation, mixed-finance, and force account.

(1) *Conventional.* Under this method, the PHA is responsible for selecting a site or property and designing the project. The PHA advertises for competitive bids to build or rehabilitate the development on the PHA-owned site. The PHA awards a construction contract in accordance with 24 CFR part 85. The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the project in accordance with the construction contract. The conventional method may be used for either new construction or rehabilitation.

(2) *Turnkey.* The turnkey method involves the advertisement and selection of a turnkey developer by the PHA, based on the best housing package for a site or property owned or to be purchased by the developer. Following HUD approval of the PHA's full proposal, the developer prepares the design and construction documents. The PHA and the developer execute the contract of sale to implement the PHA's full proposal. The developer is responsible for providing a completed

housing project, which includes obtaining construction financing. Upon completion of project construction or rehabilitation in accordance with the contract of sale, the PHA purchases the development from the developer. This method may be used for either new construction or rehabilitation.

(3) *Acquisition*. The acquisition method involves a purchase of existing property that requires little or no repair work. Any needed repair work is completed after acquisition, either by the PHA contracting to have the work done or by having the staff of the PHA perform the work.

(4) *Mixed-finance*. This method involves financing from both public and private sources and may involve ownership of the public housing units by an entity other than the PHA. This method of development may be carried out by a PHA only in accordance with the requirements set forth in subpart F.

(5) *Force account*. The force account method involves use of PHA staff to carry out new construction or rehabilitation. A PHA may only develop a full proposal based on the force account method if HUD has determined that the PHA has the capability to develop successfully the public housing units using this method.

(b) *Funding*. A PHA may develop public housing with:

(1) Development funds reserved by HUD for that purpose;

(2) Modernization funds under section 14 of the Act (42 U.S.C. 1437l), to the extent authorized by law and under procedures approved by HUD; and/or

(3) Funds available to it from any other source, consistent with § 941.306(c), or as may be otherwise approved by HUD.

(c) *Limit on number of units*. (1)

General. A PHA may not develop public housing pursuant to this part beyond the lesser of the number of units that the PHA had under ACC on August 21, 1996, or the number of units for which it was receiving operating subsidy on that date, unless authorized by HUD. HUD may condition such authorization on the PHA's agreement that such incremental units, once developed, will be ineligible for capital and/or operating subsidies from HUD.

(2) *Replacement housing units*. With respect to units constructed to replace public housing units that were demolished or disposed of, a PHA may use (in whole or in part) funding from non-HUD sources or from HUD funding not provided under the Act. However, development of such units must be approved by HUD in advance for them

to be eligible for inclusion under the ACC.

3. Section 941.103 is amended as follows:

a. By removing the definitions of "Allocation area", "Application", "Central city allocation area", "Community", "Field Office", "Housing Assistance Plan", "Household type", and "Housing type".

b. By removing the parenthetical phrase "(in the form prescribed by HUD)" from the definitions of "Construction Contract" and "Contract of sale";

c. By revising the definition of "Proposal" to read as set forth below; and

d. By removing from the definition of "Total development cost (TDC)" the term "the Field Office" and adding in its place the term "HUD", and by removing from that definition the parenthetical sentence at the end "(See 24 CFR 941.204)".

§ 941.103 Definitions.

* * * * *

Proposal. A document submitted by a PHA to HUD, in accordance with subpart C of this part, for approval of the development of a public housing project. As used in this part, "proposal" refers to both the "site acquisition proposal" (§ 941.303), and the "full proposal" (§ 941.304), unless specifically indicated otherwise.

* * * * *

4. Section 941.201 is amended as follows:

a. By removing from paragraph (a) the term "The field office" and adding in its place the term "HUD";

b. By redesignating paragraph (c) as paragraph (d); and

c. By adding a new paragraph (c), to read as follows:

§ 941.201 PHA eligibility.

* * * * *

(c) *Troubled PHAs*. Unless HUD determines that a PHA that has been classified as troubled or modernization-troubled, in accordance with 24 CFR part 901, has adequate capacity to develop public housing units, the PHA so classified shall engage a HUD-approved program manager to develop and implement the PHA's proposal. HUD shall review the solicitation and the selection before award of a contract is made by such a PHA.

* * * * *

5. Section 941.202 is amended:

a. By redesignating paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), and (c)(2), as paragraphs (c)(1)(i) introductory text, (c)(1)(i)(A), (c)(1)(i)(B), and (c)(1)(ii), respectively;

b. By redesignating the introductory text of paragraph (c) as the introductory text of paragraph (c)(1);

c. By adding a new paragraph (c)(2) to read as set forth below;

d. Removing paragraph (c)(3); and

e. In paragraph (f), by removing the phrase "local housing assistance plan approved by the field office" and adding in its place the phrase "local plan approved by HUD".

§ 941.202 Site and neighborhood standards.

* * * * *

(c) * * *

(2) Notwithstanding any other provision of this paragraph (c), public housing units constructed after demolition of public housing units may be built on the original public housing site, or in the same neighborhood, if one of the following criteria is satisfied:

(i) The number of public housing units being constructed is no more than 50 percent of the number of units in the original project;

(ii) In the case of replacement of a currently occupied project, the number of public housing units being constructed is the minimum number needed to house current residents who want to remain at the site; or

(iii) The public housing units being constructed constitute no more than twenty-five units.

* * * * *

6. Section 941.203 is revised to read as follows:

§ 941.203 Design and construction standards.

(a) Physical structures shall be designed, constructed and equipped so as to improve or harmonize with the neighborhoods they occupy, meet contemporary standards of modest comfort and liveability, promote security, and be attractive and marketable to the people they are intended to serve. Building design and construction shall strive to encourage in residents a proprietary sense, whether or not homeownership is intended or contemplated.

(b) Projects must comply with:

(1) A national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code;

(2) Applicable State and local laws, codes, ordinances, and regulations; and

(3) Other Federal requirements, including any Federal fire-safety requirements and HUD minimum property standards (e.g., 24 CFR part 200, subpart S, and § 941.208).

(c) Projects for families with children shall consist to the maximum extent

practicable of low-density housing (e.g., non-elevator structures, scattered sites or other types of low-density developments appropriate in the community).

(d) High-rise elevator structures shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative. High-rise buildings for the elderly may be used if the PHA demonstrates and HUD determines that such construction is appropriate, taking into consideration land costs, the safety and security of the prospective occupants, and the availability of community services.

§ 941.204 [Removed]

7. Section 941.204 is removed.

8. Section 941.205 is revised to read as follows:

§ 941.205 PHA contracts.

(a) *ACC requirements.* In order to be considered as eligible project expenses, all development related contracts entered into by the PHA shall provide for compliance with the provisions of the ACC.

(b) *Contract forms.* HUD may prescribe the form of any development related contracts, and the PHA shall use such forms. If a form is not prescribed, the PHA may develop its own form; however, it must contain all applicable federal requirements.

(c) *When HUD approval is required.* The PHA is authorized to execute all development-related contracts without prior HUD review or approval with the exception of:

(1) All forms of site or property acquisition contracts regardless of development method; and

(2) Contracts whose amount exceeds a contract approval threshold established by HUD for that PHA; and

(3) A contract for the selection of a program manager to develop and implement the PHA's proposal (see § 941.201(c)).

(d) Each PHA shall certify before executing any contract with a contractor that the contractor is not suspended, debarred, or otherwise ineligible under 24 CFR part 24. The PHA also shall ensure that all subgrantees, contractors, and subcontractors select only contractors who are not listed as suspended, debarred, or otherwise ineligible under 24 CFR part 24.

§ 941.206 [Removed]

9. Section 941.206 is removed.

10. Section 941.208 is revised to read as follows:

§ 941.208 Other Federal requirements.

(a) *General.* The PHA shall be subject to all statutory, regulatory, and executive order requirements applicable to public housing development (see, e.g., 24 CFR parts 5, 8, 35, 50, and 965), as may be more fully described by HUD in notices, handbooks, or other guidance.

(b) *Lead-based paint.* In addition to the applicable requirements of 24 CFR part 35, all existing properties constructed prior to 1978 and proposed to be acquired for family projects under this part shall be tested for lead-based paint on applicable surfaces, as defined in 24 CFR part 965. If lead based paint is found, the cost of testing and abatement shall be considered when justifying new construction or meeting maximum total development cost limitations. For any units containing lead-based paint, compliance with 24 CFR part 965, subpart H, is required, and abatement shall be completed prior to occupancy.

11. Subpart C is revised to read as follows:

Subpart C—Application and Proposal

Sec.

- 941.301 Application.
- 941.302 Annual contributions contract; drawdowns and advances.
- 941.303 Site acquisition proposal.
- 941.304 Full proposal content.
- 941.305 Technical processing and approval.
- 941.306 Maximum development cost.

Subpart C—Application and Proposal

§ 941.301 Application.

If funding is made available for public housing development, HUD will provide information about fund allocation, application deadline, and selection criteria and procedures through a Notice of Funding Availability (NOFA).

§ 941.302 Annual contributions contract; drawdowns and advances.

(a) A PHA wishing to develop public housing shall execute an ACC or ACC amendment covering the entire amount of reserved development funds or the amount of modernization funds (under section 14 of the Act, 42 U.S.C. 1437l) it proposes to use in accordance with this part. This ACC or ACC amendment must be executed by both the PHA and HUD before funds can be provided to the PHA.

(b) Until HUD has approved a PHA's full proposal, a PHA may only draw down funds under the ACC for pre-development costs for materials and services related to proposal preparation and submission. Expenditures for pre-development costs shall not exceed

three percent of the total development cost stated in the executed ACC.

(c) HUD may approve the following in writing:

(1) Amounts in excess of three percent of TDC for pre-development costs; and/or

(2) Drawdown of funds to enable a PHA to acquire a site after approval by HUD of the PHA's site acquisition proposal, in accordance with § 941.303.

(d) After HUD approval of the full proposal, the PHA may draw down additional funds under the ACC to develop the public housing units in accordance with the approved full proposal.

§ 941.303 Site acquisition proposal.

When a PHA determines that it is necessary to acquire land for development through new construction, it may spend funds authorized under this part to acquire development sites. HUD must approve a PHA's proposed use of funds before it may acquire sites in this manner. A PHA must submit the following documents for HUD review and approval, in accordance with the standards set forth in § 941.305:

(a) *Justification.* A justification for acquiring land prior to PHA proposal approval;

(b) *Site information.* An identification and description of the proposed site, site plan, neighborhood, and evidence of PHA control of the site for at least sixty (60) days after proposal submission.

(c) *Zoning.* Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project.

(d) *Development schedule.* A copy of the PHA development schedule, including the PHA architect estimates of the time required to complete each major development stage.

(e) *Environmental assessment.* All available environmental information on the proposed development (to expedite the HUD environmental review).

(f) *Appraisal.* An appraisal of the proposed site by an independent, state-certified appraiser.

§ 941.304 Full proposal content.

Each full proposal shall include at a minimum the following:

(a) *Project description.* A description of the housing, including the number of units, schematic drawings of the proposed building and unit plans, outline specifications or rehabilitation work write-ups, and the types and amounts of non-dwelling space to be provided;

(b) *Description of development method.* A description of the PHA's proposed development method, and a demonstration by the PHA that it will be able to use this method successfully to develop the public housing units. If the PHA proposes to use the turnkey method, it must submit a Board-approved certification that the developer was selected as the result of a public solicitation for proposals and that the selection was based on an objective rating system, using such factors as site location, project design, price, and developer experience. If the PHA proposes to use the acquisition method, the PHA must submit a certification by the PHA and owner that the property was not constructed with the intent that it would be sold to the PHA. If the PHA proposes to use the mixed-finance method, it should have consulted with HUD on its plans. If the PHA proposes to use the force account method to develop the public housing units, it must have already received approval from HUD of its capability to carry out the development successfully in this manner;

(c) *Site information.* An identification and description of the proposed site, site plan, neighborhood, and evidence of PHA or turnkey developer control of the site for at least sixty (60) days after proposal submission;

(d) *Project costs.* (1) *Categories of cost.* The detailed budget of the costs of developing the project, in accordance with the form prescribed by HUD. With respect to costs of demolition and relocation, the description must distinguish between costs related to existing public housing property and costs related to acquisition of a new public housing site;

(2) *Budget and payment schedule.* A budget that identifies the sources of funding for relocation benefits, and a payment schedule anticipated to be provided under a construction contract;

(e) *Appraisal.* An appraisal of the proposed site or property by an independent, state-certified appraiser;

(f) *Financial feasibility.* Identification of funds sufficient to complete the development, including a reasonable contingency;

(g) *Zoning.* Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project;

(h) *Facilities.* A statement addressing the adequacy of existing facilities and services for the prospective occupants of the project, a description of public improvements needed to ensure the viability of the proposed project with a

description of the sources of funds available to carry out such improvements, and, if applicable, a statement addressing the minority enrollment and capacity of the school system to absorb the number of school-aged children expected to reside in the project;

(i) *Relocation.* A certification by the PHA that it will comply with all applicable Federal relocation requirements;

(j) *Life-cycle analysis.* For new construction and substantial rehabilitation, the criteria to be used in equipping the proposed project(s) with heating and cooling systems, and which shall include a life-cycle cost analysis of the installation, maintenance and operating costs of such systems pursuant to section 13 of the Act (42 U.S.C. 1437k);

(k) *Project development schedule.* A copy of the PHA development schedule, including the PHA architect or turnkey developer estimates of the time required to complete each major development stage;

(l) *Environmental assessment.* All available environmental information on the proposed development (to expedite the HUD environmental review);

(m) *Occupancy and operation policies.* Statement of all PHA policies and practices that will be used in occupancy and operation that contribute to an overall objective of ending the social and economic isolation of low income people and promoting their economic independence;

(n) *New construction certification.* If a PHA's proposal involves new construction, evidence of compliance with section 6(h) of the Act in one of the following two ways:

(1) Submission of a PHA comparison of the cost of new construction in the neighborhood where the PHA proposes to construct the housing and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood; or

(2) Certification by the PHA, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition; and

(o) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine whether it can approve the proposal pursuant to § 941.305.

§ 941.305 Technical processing and approval.

(a) *Standards.* HUD shall review the full proposal, submitted in accordance with § 941.304, and the site acquisition

proposal, submitted in accordance with § 941.303, to determine whether each proposal complies with all statutory, executive order, and regulatory requirements applicable to public housing development including, if applicable, the comments received as a result of Intergovernmental Review. In addition, HUD shall carry out any necessary statutory and executive order reviews with respect to the proposal under review. If HUD determines that the proposal under review is acceptable, it shall notify the PHA in writing and shall forward to it for execution an ACC (or ACC amendment). If the PHA already has executed an ACC (or ACC amendment) for the entire reserved amount, HUD shall notify the PHA that it is authorized to draw down funds in accordance with § 941.302.

(b) *Approved proposal.* Units developed under this part shall be developed only in accordance with an approved proposal.

(c) *Approved amendments.* Material changes in the approved proposal, including any increase in the budget or any change in the payment schedule, require an amendment to the proposal, which must be approved by HUD. The determination of what constitutes a material change will be made by HUD.

§ 941.306 Maximum development cost.

(a) *Limit on approved HUD funds to Total Development Cost.* No funds provided by HUD pursuant to the Act may be used to pay costs in excess of the TDC without the written approval of HUD. Approval of a higher project cost will only be given upon the following demonstration by the PHA:

(1) That the excess costs are reasonable and necessary to develop a modest non-luxury project consistent with the standards set forth in this part, providing for efficient project design, durability, energy conservation, safety, security, economical maintenance, and healthy family life in a neighborhood environment; and

(2) That the PHA has the funds available to pay for such excess costs.

(b) *Determination of maximum TDC.* HUD will determine the maximum total development cost (TDC) in accordance with section 6 of the Act. The maximum TDC for a development is calculated by multiplying the number of units for each bedroom size and structure type in the project times the applicable unit TDC limit for the bedroom size and structure type and adding the resulting amounts for all units in the project.

(c) *Donations.* Donations from other funding sources may be obtained by the PHA to supplement project costs which otherwise could not be included,

provided that the added funds are not used for items that would result in substantially increased operating, maintenance or replacement costs, and the HUD certification required under section 102 of the HUD Reform Act (42 U.S.C. 3545) can be made in accordance with 24 CFR part 12 (subpart D). Although donations are not subject to the TDC limitations set forth in paragraph (a) of this section, donations must be included in the project development cost budget, and legally acceptable written commitments for such donations must be provided by the PHA for HUD approval.

12. Subpart D is revised to read as follows:

Subpart D—Project Development

Sec.

- 941.401 Site and property acquisition.
- 941.402 Project design and construction.
- 941.403 Acceptance of work and contract settlement.
- 941.404 Completion of development.

Subpart D—Project Development

§ 941.401 Site and property acquisition.

(a) *Applicability.* The provisions of this section apply to projects being developed under the conventional, acquisition, and force account methods, and may apply to other development methods, as deemed appropriate by HUD.

(b) *Purchase agreement.* The purchase agreement shall reflect any conditions established by HUD, such as the site engineering studies that must be completed to determine whether the site is suitable for development of the project.

(c) *Title.*—(1) *General.* After HUD approves the site or property acquisition contract and notifies the PHA that it is authorized to take title, the PHA shall obtain title in accordance with the following certification. The PHA shall certify to HUD that it obtained a title insurance policy that guaranteed that the title was good and marketable before taking title and that it promptly recorded the deed and declaration of trust in the form prescribed by HUD.

(2) *Limitation.* After HUD notifies a PHA that has been determined to be troubled or modernization troubled in accordance with part 901 of this chapter, or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (c)(1) of this section, that the site or property acquisition contract has been approved, the PHA shall submit to HUD evidence that title to the site or property is good and marketable. If HUD approves the title evidence, it will

inform the PHA that it is authorized to acquire title to the site or property. The PHA shall record promptly the deed and declaration of trust in the form prescribed by HUD, and HUD may require the PHA to submit evidence of such recordation.

§ 941.402 Project design and construction.

(a) *Compliance with HUD construction standards and Federal procurement requirements.*

(1) *General.* A PHA may certify that its proposed design and construction plans for the development are in accordance with HUD's design and construction standards at § 941.203, and that its bidding procedures are in accordance with Federal procurement requirements.

(2) *Limitation.* In the case of a PHA determined to be troubled or modernization troubled in accordance with part 901 of this chapter or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (a)(1) of this section, the PHA must submit the proposed design and construction plans and its bidding procedures (unless HUD notifies the PHA that it may use the certification procedure specified in paragraph (a)(1) of this section).

(b) *Contract administration.* The PHA shall be responsible for contract administration and shall contract for the services of an architect, or other person licensed under State law, to assist and advise the PHA in contract administration and inspections to assure that the work is done in accordance with HUD requirements. A HUD representative may periodically visit the project site to monitor PHA contract administration.

(c) *Prevailing wage rates.* See § 965.101 of this chapter.

§ 941.403 Acceptance of work and contract settlement.

(a) *Notification of completion.* The contractor or developer shall notify the PHA in writing when the contract work, including any approved off-site work, will be completed and ready for inspection.

(b) *Acceptance.* (1) *General.* A PHA may carry out the final inspection of the work and may accept the completed work. If, upon inspection, the PHA determines that the work is complete and satisfactory, except for work that is appropriate for delayed completion, the work shall be accepted by the PHA. The PHA shall certify to HUD before it pays the contractor or developer that it has inspected the work and determined that it is acceptable and in compliance with the construction contract or contract of

sale and HUD requirements. The PHA shall determine any hold-back for items of delayed completion, and the amount due and payable for the work that has been accepted including any conditions precedent to payment that are stated in the construction contract or contract of sale. The contractor or developer shall be paid for items of delayed construction only after inspection and acceptance of this work by the PHA.

(2) *Limitation.* In the case of a PHA determined to be troubled or modernization troubled in accordance with part 901 of this chapter or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (b)(1) of this section, the procedure described in paragraph (b)(1) of this section will be followed, except that HUD must concur in the necessary PHA determinations and approvals.

(c) *Guarantees and warranties.* The construction contract or contract of sale shall specify the project guaranty period and amounts to be withheld and shall provide for assignment to the PHA of all manufacturer and supplier warranties required by the construction documents. The PHA shall inspect each dwelling unit and the overall project approximately three months after the beginning of the project guaranty period and three months before its expiration and also as may be necessary to exercise its rights before expiration of any warranties. The PHA shall require repair or replacement, prior to the expiration of the guaranty or warranty periods, of any defective items.

(d) *Title to turnkey projects.* (1) *General.* When the work has been inspected and accepted on a turnkey project, in accordance with paragraph (b) of this section, the PHA is authorized to take title to the completed project in accordance with the following certification. The PHA shall certify to HUD that it obtained a title insurance policy that guaranteed that the title was good and marketable before taking title and that it promptly recorded the deed and declaration of trust in the form prescribed by HUD.

(2) *Limitation.* After inspection and acceptance of the work in accordance with paragraph (b) of this section, a PHA that has been determined to be troubled or modernization troubled in accordance with part 901 of this chapter, or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (d)(1) of this section shall submit to HUD evidence that title to the completed project is good and marketable. If HUD approves the title evidence, it will inform the PHA that it

is authorized to acquire title to the completed project. The PHA shall record promptly the deed and declaration of trust in the form prescribed by HUD, and HUD may require submission of evidence of such recordation.

§ 941.404 Completion of development.

(a) When all development has been completed and paid for, but not later than 12 months after the end of the initial operating period unless a longer period is approved by HUD, the PHA shall submit a statement of the actual development cost. For this purpose, the initial operating period with respect to each project is the period commencing with the date of initiation of the project and ending with the earliest of the following three dates: the end of the calendar quarter in which ninety-five percent of the dwelling units in the project are occupied; the end of the calendar quarter that is six, seven, or eight months after the date of full availability of the project; or the end of the calendar quarter next preceding the date of physical completion of the project.

(b) HUD shall review the statement and establish the actual development cost of the project, which becomes the maximum total development cost for purposes of the ACC.

13. Subpart E is revised to read as follows:

Subpart E—Performance Review

§ 941.501 HUD review of PHA performance; sanctions.

(a) *HUD determination.* HUD shall carry out such reviews of the performance of each PHA as may be necessary or appropriate to make the determinations required by this paragraph (a), taking into consideration all available evidence.

(1) *Conformity with PHA proposal.* HUD shall determine whether the PHA has carried out its activities under this subpart in a timely manner and in accordance with its approved proposal.

(i) In making this determination, HUD shall review the PHA's performance under previous inspections, audit findings and other sources to determine whether the development activities undertaken during the period under review conform substantially to the activities specified in the approved PHA proposal. HUD also shall review a PHA's development schedule to determine whether the PHA has carried out its development activities in a timely manner;

(ii) HUD shall review a PHA's performance to determine whether the

activities carried out comply with the requirements of the Act, and other applicable laws and regulations.

(2) *Continuing capacity.* HUD shall determine whether the PHA has a continuing capacity to carry out its development plan in a timely manner. The primary factors to be considered in arriving at a determination that a PHA has a continuing capacity are those described in paragraph (a)(1) of this section ("conformity with PHA proposal"). HUD shall give particular attention to PHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(b) *Notice of deficiency.* Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a notice of deficiency stating the specific program requirements that the PHA has violated and requesting the PHA to take any of the actions specified in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a corrective action order, whether or not a notice of deficiency has been issued previously with respect to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the PHA of the specific program requirements that the PHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section must be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies;

(2) Before ordering corrective action, HUD shall notify the PHA and give it an opportunity to consult with HUD regarding the proposed action;

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement (ACC);

(d) *Basis for corrective action.* HUD may order a PHA to take corrective action only if it determines:

(1) The PHA has not carried out its activities under the development program in a timely manner and in accordance with its approved proposal, or HUD requirements, as determined in paragraph (a)(1) of this section;

(2) The PHA does not have a continuing capacity to carry out its proposal in a timely manner or in accordance with its proposal or HUD

requirements, as determined in paragraph (a)(2) of this section;

(3) The PHA has failed to repay HUD for amounts awarded under the development programs that were improperly expended;

(e) *Types of corrective action.* HUD may direct a PHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions to determine the cause for a PHA not meeting the standards in paragraphs (a)(1) or (a)(2) of this section;

(ii) Explaining any steps the PHA is taking to correct the deficiencies;

(iii) Documenting that PHA activities were not inconsistent with the PHA's proposal or other applicable laws, regulations or program requirements; and

(iv) Demonstrating that the PHA has a continuing capacity to carry out the proposal in a timely manner;

(2) Submit schedules for completing the work identified in its proposal and report periodically on its progress in meeting the schedules;

(3) Notwithstanding 24 CFR 941.205(c), 24 CFR 941.402(a) and 24 CFR 85.36(g), submit to HUD documents for prior approval, which may include, but are not limited to:

(i) Complete design, construction and bid documents (prior to soliciting bids);

(ii) Complete rehabilitation drawings/specifications or work write-ups;

(iii) Development budgets, including modifications;

(iv) Proposed award of contracts, including construction contracts, turnkey contracts of sale, letters of commitment, and contracts with the architect/engineer (prior to execution);

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA proposal, or periodic performance report;

(5) Not incur financial obligations, or to suspend payments for one or more activities;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(f) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the PHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Terminate future draw downs and/or advances to the PHA. In such case, the amount of advances made to the PHA shall be repaid by the PHA from

any funds or assets available for that purpose;

(2) Require alternative management of development functions by an entity other than the PHA;

(3) Cancel the fund reservation if the PHA fails to start (begin construction or rehabilitation), or complete (acquisition) within 30 months from the date of the fund reservation pursuant to section 5(k) of the Act;

(4) Recapture for good cause any grant amounts previously provided to a PHA, based upon a determination that the PHA has failed to comply with the requirements of the development program.

(g) *Right to appeal.* Before taking any of the actions described in paragraph (f) of this section, HUD shall notify the PHA and give it an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the proposed action.

14. Section 941.602(a) is revised to read as follows:

§ 941.602 Applicability of other requirements.

(a) *Relationship of this subpart to other requirements in 24 CFR part 941.* The requirements contained in this

subpart apply only to the development of public housing units using mixed-finance development methods under this subpart and to the operation of public housing units that are owned, or that will be owned, by an owner entity under this subpart. Other requirements for the development of public housing, as set forth in subparts A through E of this part, shall not apply to the development of public housing units pursuant to this subpart, except as may be required by HUD. Applicable requirements include, but shall not be limited to, the following:

(1) Section 941.103 ("Definitions") (definitions of the following terms only shall apply to this subpart: "Annual Contributions Contract (ACC)," "cooperation agreement," "design documents," "reformulation," and "Total Development Cost (TDC)."

(2) Section 941.201 ("PHA eligibility") (except that specific requirements governing the cooperation agreement, as set forth in § 941.201(c), shall be determined in accordance with this subpart);

(3) Section 941.202 ("Site and neighborhood standards");

(4) Section 941.203 ("Design and construction standards");

(5) Section 941.205 ("PHA contracts") (except that the reference to "development related contracts entered into by the PHA" shall be construed to mean "development related contracts entered into by the PHA or the owner entity");

(6) Section 941.207 ("Relocation and acquisition");

(7) Section 941.208 ("Other Federal requirements");

(8) Section 941.209 ("Audit");

(9) Section 941.306 ("Maximum development cost");

(10) Section 941.402 ("Project design and construction");

(11) Section 941.403 ("Acceptance of work and contract settlement");

(12) Section 941.404 ("Completion of development"); and

(13) Section 941.501 ("HUD review of PHA performance; sanctions").

* * * * *

Dated: June 11, 1996.

Kevin Emanuel Marchman,
Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 96-18356 Filed 7-17-96; 3:59 pm]

BILLING CODE 4210-33-P