

## APPENDIX 1

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**AUTHORITY:** Secs. 4, 5, and 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437e; sec. 7(d), Dept of HUD Act (42 U.S.C. 1535(d)).

**SOURCE:** 45 FR 60838, Sept. 12, 1980, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

**EDITORIAL NOTE:** Nomenclature changes affecting this part appear at 49 FR 6714, Feb. 23, 1984.

**Subpart A—General****§ 941.101 Purpose and scope.**

(a) **Purpose.** The U.S. Housing Act of 1937 (Act) authorizes HUD to assist public housing agencies (PHAs) with the development and operation of lower income housing projects and financial assistance in the form of loans and contributions, or grants, under sections 4, 5, and 9 of the Act. This part is the regulation under which lower income housing (excluding Indian housing), herein called public housing, is developed. The regulations for development of other housing assisted under the Act are contained in Part 905 of this chapter (Indian housing) and in Chapter VIII (Section 8 housing). The requirements for the administration of a PHA and for the operation and management of public housing projects are stated in this chapter, in Chapter VII, and in the Annual Contributions Contract (ACC). Regulations that relate to the public housing program include:

- (1) Part 791—Application review and fund allocations.
- (2) Part 799—Waiver authority.
- (3) Part 912—Definition of family and single person occupancy.
- (4) Part 960—Income limits, tenant selection, and rents.
- (5) Part 965—Project management.
- (6) Part 966—Lease and grievance procedure.
- (7) Part 967—Personnel policies and compensation.
- (8) Part 968—Modernization.
- (9) Part 969—Demolition and disposition.
- (10) Part 990—Operating subsidy.
- (11) Part 999—Waiver authority.

(b) **Scope.** This regulation establishes two different procedures to be followed for inviting proposals for public housing projects from PHAs based on whether the PHA is located inside or outside a central city allocation area.

(1) A PHA located inside a central city allocation area will not be required to submit an application. Such PHAs will be invited to submit proposals (subpart D) when funds are allocated pursuant to 24 CFR part 791.

(2) A PHA located outside a central city allocation area will be required to submit an application (subpart C) which provides sufficient data for the field office to evaluate the community's housing needs and priorities relative to other communities within the field office jurisdiction. The applications will be rated by the field office and placed in an application pipeline. Such PHAs, based on the priority rating of their pipeline applications, will be invited to submit proposals (subpart D) when funds are allocated pursuant to 24 CFR part 791.

(45 FR 60838, Sept. 12, 1980, Redesignated and amended at 49 FR 6714, 6715, Feb. 23, 1984, and further amended at 56 FR 13282, Apr. 1, 1991)

**EFFECTIVE DATE NOTE:** At 56 FR 13282, Apr. 1, 1991, § 941.101 was amended by revising the first sentence of paragraph (a), effective May 1, 1991. For the convenience of the user, the superseded text follows:

**§ 941.101 Purpose and scope.**

(a) **Purpose.** The U.S. Housing Act of 1937 (Act) authorizes HUD to assist public housing agencies (PHAs) for the development and operation of lower income housing projects and financial assistance in the form of loans and annual contributions under sections 4, 5 and 9 of the Act. . . .

**§ 941.102 Development methods.**

A PHA may use one of three different methods to develop a project. The following are brief summaries of these development methods.

(a) **Conventional.** The conventional method may be used for either new construction or rehabilitation. The PHA is responsible for selecting a site or property and designing the project. After field office approval of a PHA proposal which identifies a site or property, the ACC is executed, site engineering studies or property inspections are performed, and the PHA acquires the sites or property. The PHA contracts with an architect to prepare the project design and construction documents. Following field office ap-

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proval of these documents, the PHA advertises for competitive bids to build or rehabilitate the project on the PHA-owned site and, after field office approval, awards a construction contract to the lowest responsible bidder. The contractor is required to furnish a 100 percent performance and payment bond or, notwithstanding 24 CFR 85.36(h), other assurances approved by the field office. 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.

(b) **Turnkey.** The turnkey method may be used for either new construction or rehabilitation. The PHA advertises for and selects the turnkey developer who submits the best housing package for a site or property owned or to be purchased by the developer. The PHA then submits a proposal, incorporating the turnkey developer's submission, to the field office for approval. After field office approval of the PHA proposal, the ACC is executed and the developer prepares the design and construction documents. Following PHA and field office approval of these documents, the developer and PHA enter into a contract of sale which is approved by the field office. 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 project from the developer.

(c) **Acquisition.** The acquisition method may be used only to purchase existing properties that require little or no repair work (not to exceed in the aggregate 10 percent of the project total development cost). The PHA identifies the specific properties and after an appraisal and field office approval, the ACC is executed, and the PHA acquires the properties. 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.

(45 FR 60838, Sept. 12, 1980, Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 3664, Mar. 11, 1988)

**§ 941.103 Definitions.**

**Act.** The U.S. Housing Act of 1937 (42 U.S.C. 1437).

**Allocation area.** A municipality, county, or group of contiguous municipalities or counties identified by the field office or in an approved areawide housing opportunity plan for the purpose of allocating housing assistance to support economically feasible housing projects (24 CFR part 791).

**Annual Contributions Contract (ACC).** A contract (in the form prescribed by HUD) for loans and contributions, which may be in the form of grants, whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of a public housing project.

**Application.** A preliminary submission pursuant to subpart C by a PHA located outside a central city allocation area which addresses local hous-

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ing need and development priority. The application is used by the field office to determine the extent that public housing funds will be allocated to specific allocation areas and which of several PHAs, competing for contract authority within an allocation area, should be given the first opportunity to submit a proposal for developing a project.

**Central city allocation area.** The central city of a standard metropolitan statistical area, or a formula entitlement community development block grant recipient, either of which is established as a separate allocation area by the field office pursuant to 24 CFR part 781.

**Community.** A municipality or other general purpose political subdivision below the county level.

**Construction Contract.** A contract (in the form prescribed by HUD) between the PHA and a contractor to build or rehabilitate a project using the conventional development method.

**Construction documents.** The working drawings and construction specifications and the rehabilitation work write-ups, where applicable, that set forth the work to be done under a construction contract or contract of sale.

**Contract of sale.** A contract (in the form prescribed by HUD) between the PHA and a developer whereby the PHA agrees to purchase a completed project after construction or rehabilitation by a developer using the turn-key development method.

**Cooperation Agreement.** An agreement between a PHA and the applicable local governing body or bodies which assures exemption from real and personal property taxes, provides for local support and services for the development and operation of a public housing project, and provides for PHA payments in lieu of taxes.

**Design documents.** The preliminary drawings and specifications and the preliminary rehabilitation work write-ups, where applicable, in sufficient detail to define the extent of construction or rehabilitation and demonstrate compliance with HUD design and construction standards.

**Field Office.** See HUD.

**Housing Assistance Plan.** A local housing assistance plan approved by the field office meeting the requirements of the community development block grant regulation (24 CFR part 870) whether or not the unit of general local government submitting the plan is a participant in the block grant program.

**Household type.** The three household types are (1) elderly and handicapped, (2) family, and (3) large family (24 CFR part 781; 24 CFR part 912 of this chapter defines elderly, family and handicapped).

**Housing type.** The three housing types are (1) new construction, (2) rehabilitation and (3) existing housing (24 CFR part 781).

**HUD.** The Department of Housing and Urban Development, including the Regional Office and the Area or Service Office (herein called field office) which has been delegated authority to perform functions pertaining to this part.

**Proposal.** A detailed PHA submission pursuant to subpart D of all informa-

tion, including identification and evidence of site control, necessary for the field office to approve a public housing project.

**Public Housing Agency (PHA).** Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development and operation of low-income housing under this part.

**Reformulation.** The procedure by which HUD approves division of a project (including units and related funds) into two or more projects, or combining two or more projects into one, or redistributing units and related funds in a project among two or more projects, in order to provide PHAs with the flexibility to adapt to site availability, to resolve development problems, to acquire buildings ready for development (before acquisition of other buildings), and to save on interest and initial operating costs.

**Total Development Cost.** The sum of all HUD approved costs for planning, (including proposal preparation), administration, site acquisition, relocation, demolition, construction and equipment, interest and carrying charges, on-site streets and utilities, non-dwelling facilities, a contingency allowance, insurance premiums, off-site facilities, any initial operating deficit, and other costs necessary to develop the project. The total development cost in the proposal when reviewed and approved by the field office becomes the maximum total development cost stated in the ACC. Upon completion of the project, the actual development cost is determined and this becomes the maximum total development cost of the project for purposes of the ACC.

(48 FR 60838, Sept. 12, 1980, as amended at 54 FR 13282, Apr. 1, 1991)

**Effective Date Note.** At 54 FR 13282, Apr. 1, 1991, § 941.103 was amended by revising the definition of "Annual Contributions Contract (ACC)" and by adding a new definition for "Reformulation," effective May 1, 1991. For the convenience of the user, the superseded text follows:

§ 941.103 Definitions.

**Annual Contributions Contract (ACC).** A contract (in the form prescribed by HUD) for loans and annual contributions whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of a public housing project.

## Subpart B—PHA Eligibility and Program Requirements

### § 941.201 PHA eligibility.

(a) **General.** In order to participate in the public housing program, a PHA must be approved as an eligible PHA. The field office will determine eligibility based on a showing that the PHA has the legal authority and local cooperation required by this part.

(b) **Legal authority.** The PHA must demonstrate that it has the legal authority to develop, own, and operate a public housing project under the Act.

(c) **Local cooperation.** The PHA must provide a cooperation agreement between the PHA and the applicable local governing body for the area in which the public housing project is to be located as evidence that the local governing body will provide the local cooperation required by HUD pursuant to the Act. This local cooperation shall include exemption from real and personal property taxes, acceptance of PHA payments in lieu of taxes, and the provision at no cost or at no greater cost by the local governing body of the same public services and facilities normally furnished to others in the community.

### § 941.202 Site and neighborhood standards.

Proposed sites for public housing projects to be newly constructed or rehabilitated must be approved by the field office as meeting the following standards:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (e.g., water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063, and HUD regulations issued pursuant thereto.

(c) The site for new construction projects must not be located in:

(1) An area of minority concentration unless (i) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. An "overriding need" may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or

(2) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, vehicular traffic, rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

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(f) The site must comply with any applicable conditions in the local housing assistance plan approved by the field office.

(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing.

(h) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(i) The project may not be built on a site that has occupants unless the relocation requirements referred to in § 941.207 are met.

(j) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

#### § 941.203 Design and construction standards.

Projects shall not be of elaborate or extravagant design or materials, and shall be developed to promote serviceability, efficiency, economy, and stability, and to promote the economic and social well being and advancement of the prospective occupants. Projects must comply with:

(a) HUD Minimum Property Standards or, if applicable, the HUD Minimum Design Standards for Rehabilitation for Residential Properties.

(b) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly, or handicapped.

(c) HUD requirements pertaining to noise abatement and control.

(d) Applicable State and local laws, codes, ordinances, and regulations.

(e) Projects for families with children shall to the maximum extent practicable consist of low-density housing (e.g., non-elevator structures, scattered sites or other types of low-density developments appropriate in the community).

(f) High-rise elevator structures shall not be provided for families with children regardless of density unless the PHA demonstrates and the field office determines that there is no practical alternative. High-rise buildings for the elderly may be used if the PHA demonstrates and the field office 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.

[45 FR 80323, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 41599, Oct. 24, 1988]

#### § 941.204 Cost guidelines.

(a) *General.* (1) HUD will establish cost guidelines to ensure that the cost of developing modest non-luxury Public Housing is reasonable. The guidelines will be used for the purpose of reserving funds for new Public Housing projects and, except as provided in § 941.408(a), will represent the maximum total development cost (TDC) that may be approved for a project.

(2) Cost guidelines represent HUD's determination of the current total development costs within a market area for modest, non-luxury Public Housing that is developed in conformity with the minimum property standards, local building codes and requirements, and the housing design and construction standards contained in this part. The cost guidelines are issued for specific unit sizes (i.e., number of bedrooms) and structure types (i.e., detached, semidetached, row, walkup, or elevator) in each market area. For the purposes of this part, market areas are those areas within which trade conditions and economic influences tend to make development costs substantially the same. Each cost guideline is developed with consideration being given to, among other things, the current cost of dwelling and non-dwelling construction and equipment, land, demolition, site improvements and PHA administrative costs.

(b) *Issuance of cost guidelines.* HUD will issue cost guidelines periodically (usually on an annual basis) by notice sent to Public Housing Agencies.

(c) *Interim revisions.* (1) A PHA or HUD field office may request revisions to cost guidelines established for a market area (or the establishment of a separate market area within an existing market area) before the issuance of the next regularly scheduled cost guidelines as described in paragraph (b) of this section. The request must be in the manner and form prescribed by HUD and must be based upon the actual costs to develop modest non-luxury Public Housing. The Assistant Secretary may issue revised guidelines for a market area (or establish a separate market area) if HUD determines that the evidence submitted clearly demonstrates that the actual cost of development within the market area (or within a separate market area within the existing market area) is higher than the most recently issued guidelines for the market area.

(2) HUD will issue with its cost guidelines, a description of the methodology used to compute the cost guidelines and a description of the documentation that must be submitted in support of a request for interim revisions.

[53 FR 41599, Oct. 24, 1988]

#### § 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.* All development related contracts shall be in the form prescribed by the field office.

(c) *Field Office approval.* The PHA, unless otherwise authorized, shall obtain the written approval of the field office prior to executing, or making payments pursuant to, any development related contracts. This includes but is not limited to contracts for project design, site and property acquisition, construction contracts, contracts of sale, and contracts for construction inspections.

#### § 941.206 Eligible properties.

(a) *Properties assisted under the Act.* Proposals involving properties already assisted under the Act, or which received assistance within one year of the date the application or proposal is submitted to the Field Office, may not be approved without the prior written approval of the Assistant Secretary.

(b) *Local or State properties.* Proposals (including, for purposes of this paragraph only, Development Programs pursuant to Program Reservations issued before October 1, 1980) for the transfer of existing PHA-owned, city, county or State-assisted projects to the Federal public housing program under the U.S. Housing Act of 1937 may not be approved, except with the prior written approval of the Assistant Secretary.

(c) *Properties secured by an FHA-insured or HUD-held mortgage or owned by HUD.* Proposals (including, for the purpose of this paragraph only, Development Programs pursuant to Program Reservations issued before October 1, 1980) involving the acquisition, with or without rehabilitation, of properties secured by an FHA-insured or HUD-held mortgage, or owned by HUD, may not be approved except with the prior written approval of the Assistant Secretary, and subject to other applicable statutory and regulatory provisions.

[49 FR 46962, Oct. 17, 1983]

#### § 941.207 Relocation and acquisition.

(a) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601-4655) and HUD implementing regulations in part 42 of this title apply to the acquisition of real property by a PHA for a project assisted under this part and to any displacement that results from such acquisition.

(b) *Exceptions.* The provisions of the Uniform Act do not apply to the following:

(1) PHA acquisition of a site or property that results from a voluntary transaction as described in § 42.101(a)(1) of this title, except the Uniform Act relocation requirements do apply to the displacement of any renter-occupant of such site or property. For purposes of relocation eligibility for such renter-occupants, the "initiation of negotiations" shall be the date of the seller's acceptance of the PHA's written offer to purchase the property.

(2) Acquisition of any property by a turnkey developer (but see paragraph (d) of this section).

(c) *Notices.* Persons scheduled to be displaced shall be given written notices and information by the PHA as specified in § 42.203 of this title. Per-

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sons not scheduled to be displaced shall be informed of the acquisition and given notice by the PHA of their opportunity to enter into a lease with the PHA. If the PHA has determined their eligibility under part 960 of this chapter.

(d) *Displacement resulting from turnkey development.* (1) Residential renter occupants who were in occupancy on the date the proposal was approved by the field office and are required to move (other than for cause) for purposes of developing the turnkey project, shall be entitled to relocation assistance. Each eligible occupant shall be provided with the following as prescribed by HUD:

(i) Appropriate advisory services to minimize hardships in adjusting to temporary or permanent relocation;

(ii) Permanent relocation to a suitable replacement dwelling unit or temporary relocation followed by permanent relocation when a suitable replacement dwelling unit becomes available;

(iii) Reimbursement for reasonable moving and related expenses; and

(iv) Advance written notice, of at least thirty (30) days, indicating the date by which the occupant is expected to move.

(2) Residential renter occupants who move into a property after field office approval of the proposal shall not be eligible for relocation assistance if, prior to occupancy, they are given written notification of their potential displacement because the property has been approved for development as public housing. The turnkey developer shall be responsible for assuring that prior notification is given to any such occupant.

(3) If a residential renter occupant moves into a property after field office approval of the proposal and is thereafter required to move (other than for cause), the turnkey developer shall be responsible for reimbursing such occupant for reasonable moving and related expenses without cost to the project or the PHA. In addition,

(i) Any such occupant who meets the Section 8 eligibility requirements shall be provided advisory services and permanent relocation in a HUD assisted housing unit in accordance with the priority criteria for displacees; or

(ii) Any such occupant who does not meet the Section 8 eligibility requirements shall be provided advisory services and assistance in finding a suitable replacement dwelling unit.

[45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 51 FR 6613, Feb. 27, 1986]

#### § 941.208 Other Federal requirements.

(a) *Equal Opportunity requirements.* Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601-3620), Executive Orders 11063, 11248, and 11375, section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and all related rules, regulations and requirements.

(b) *Environmental requirements.* Participation in this program requires compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the Clean Air Act (42 U.S.C. 1857), the Federal Water Pollution Control Act (33 U.S.C. 1151), the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the National Historic Preservation Act of 1966 (Pub. L. 89-665), the Archeological and Historic Preservation Act of 1974 (Pub. L. 93-291), Executive Order 11593 relating to the Protection and Enhancement of the Cultural Environment (including the procedures prescribed by the Advisory Council on Historic Preservation at 38 CFR part 800), E.O. 11988 on Floodplain Management, Executive Order 11990 for the Protection of Wetlands, and all related rules, regulations and requirements.

(c) *Accessibility requirements.* Participation in this program requires compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Executive Order 11914, and title VII of the Civil Rights Act of 1964, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601-3620) (Fair Housing Act), relating to nondiscrimination against the handicapped, and all related rules, regulations and requirements.

(d) *Prevailing wages.* Participation in this program requires that not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276) shall be paid to all laborers and mechanics employed in the development of a project. All architects, technical engineers, draftsmen and technicians shall be paid not less than the wages prevailing in the locality as determined or adopted by HUD (42 U.S.C. 1437j). Prevailing wages determined under State law are inapplicable under the circumstances set out in § 941.503(d).

(e) *Minority business enterprise.* Participation in this program requires compliance with E.O. 11625, Prescribing Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise.

(f) *Age discrimination.* Participation in this program requires compliance with the Age Discrimination Act of 1975, and all related rules, regulations, and requirements.

(g) *Applicability of 24 CFR part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR part 85 are applicable to grants made under this part on or after October 1, 1986, except that § 941.502 is not subject to § 85.36(g), and as otherwise specified in this part.

(h) *Lead-based paint.* All existing properties constructed prior to 1978 (or substantially rehabilitated prior to 1978) and proposed to be acquired for family projects (whether or not they will need rehabilitation) under this part shall be tested for lead-based paint on applicable surfaces (including defective paint surfaces) as described in 24 CFR 968.9(e)(2). If lead-based paint is found, the cost of testing and abatement shall be considered when: (1) Making the cost comparison to justify new construction as well as (2)

meeting maximum total development cost limitations. If units containing lead-based paint are acquired, compliance with 24 CFR part 35 and 24 CFR part 965 subpart H is required, and abatement as described in 24 CFR 965.705 shall be completed prior to occupancy.

(i) *Intergovernmental Review.* Participation in this program requires compliance with Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52. This order allows each State to establish its own process for review and comment on proposed Federal financial assistance programs.

[45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 51 FR 6046, Mar. 11, 1986; 51 FR 20802, June 6, 1986; 53 FR 30216, Aug. 10, 1988; 56 FR 13282, Apr. 1, 1991]

*Effective Date Note:* At 56 FR 13282, Apr. 1, 1991, § 941.208 was amended by revising paragraphs (a) and (c) and adding paragraph (i), effective May 1, 1991. For the convenience of the user, the superseded text follows:

#### § 941.208 Other Federal requirements.

(a) *Equal Opportunity requirements.* Participation in this program requires compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 3601), Executive Orders 11063, 11248, and 11375, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and all related rules, regulations and requirements.

(c) *Rehabilitation Act.* Participation in this program requires compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), relating to nondiscrimination against the handicapped, Executive Order 11914, and all related rules, regulations and requirements.

#### § 941.209 Audit.

All PHAs that receive funds under this part for the development of lower-income housing shall comply with audit requirements in 24 CFR part 44.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986]

#### Subpart C—Application

##### § 941.301 General.

(a) *Applicability.* Applications under this subpart may be filed only by PHAs located outside a central city allocation area. Such a PHA may submit one or more applications for a public housing project or projects at any time.

(b) *Purpose.* The application gives a PHA which must compete with other PHAs in the same allocation area an opportunity to advise the field office of the extent to which the application would address local housing needs, of the relationship of the proposed public housing project to other local development activities, and of any factors entitling the application to a priority rating. Applications with a high priority rating will be retained in the field office pipeline and, when funds become available to the field office, PHA with pipeline applications will be

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invited to submit proposals pursuant to subpart D. In this way, a PHA will not have to make front-end expenditures to prepare proposals and option sites until the PHA has a reasonable assurance of obtaining funding for a project.

(c) *Revisions.* Each PHA with an application being held in the field office pipeline pursuant to § 941.303, during the month of July shall notify the field office in writing that the PHA has reviewed the contents of its application and determined that no changes are required or, if applicable, the PHA shall submit a revised application.

#### § 941.302 Content.

(a) *General.* Each application shall be for a specific project, and separate applications shall be submitted by housing type, development method, and community for which the project is proposed. If a PHA submits more than one application for a community, the PHA shall assign a priority rating to each application for that community based on the PHA assessment of local housing need and priorities.

(b) *PHA eligibility.* The application shall include a showing that the PHA has met the eligibility and local cooperation requirements of § 941.201.

(c) *PHA administrative capability.* The application shall include evidence from a new PHA or updated information, if any, that the PHA has the capability to develop the project and operate all of its projects in compliance with the program requirements.

(d) *Tenant selection experience.* The application shall include:

(1) A statement of the PHA experience in selecting tenants whose habits or practices may reasonably be expected to have a positive effect on the project or other tenants; and

(2) A statement of the PHA experience in selecting a cross section of tenants with a broad range of incomes and rent paying abilities that is representative of the range of incomes for lower income families in the community.

(e) *Housing need and local priorities.* The application shall include:

(1) A statement of the extent the application would address local housing need in the community for which the project is proposed to meet any applicable three-year HAP goals or, in the absence of a HAP, other housing needs identified in State, regional, or local housing surveys or plans;

(2) Information concerning local housing priorities and relationship of the proposed project to local community development activities.

(f) *Project description.* The application shall indicate the:

(1) Community for which the housing is proposed;

(2) Development method;

(3) Housing type; and

(4) Number of units by household type, unit size (number of bedrooms) and structure type.

#### § 941.303 Pipeline.

(a) *Application review.* Each application shall be reviewed by the field office for completeness and consistency with the program requirements.

(b) *Application rating.* Each approved application will be assigned a general priority rating based on housing need and relationship of the proposed project to other local activities. In establishing the priority rating, consideration also shall be given to local priorities identified in the application and the PHA's ability to develop additional public housing.

(c) *Retention in application pipeline.* Approvable applications shall be retained in the application pipeline by the field office until sufficient funds become available or until applications with a higher priority rating are received. The number of units in the pipeline applications shall not exceed the number of units that can reasonably be expected to be funded in a three-year period. If the number of units in pipeline applications exceeds this level, only the applications with the highest priority rating shall be retained by the field office.

(d) *Disposition of applications.* Unapprovable applications and those receiving a rating which places them below the anticipated three-year funding level will be returned to the PHA with an explanation of the reasons for the action.

#### Subpart D—Proposal

##### § 941.401 Fund allocation.

Funds for public housing projects are allocated to each field office and specific allocation areas pursuant to 24 CFR part 781, subpart D. Each field office develops an allocation plan which establishes the amount of public housing funds to be made available for specific allocation areas and announces the estimated number of units, by housing type and household type, that these funds are expected to produce in such allocation areas.

##### § 941.402 PHAs inside central city allocation areas.

(a) *Issuance of invitation.* When public housing funds become available for a central city allocation area, the field office shall send an invitation to the PHA, identifying the amount of public housing funds allocated and inviting the PHA to submit proposals pursuant to this subpart. Prior to proposal submission, the PHA shall be invited to provide the following information within a specified time:

(1) Evidence that the PHA has met the eligibility and local cooperation requirements of § 941.201;

(2) Evidence of the PHA administrative capability and tenant selection experience pursuant to § 941.302(c) and § 941.302(d);

(3) Identify, for each proposal the development method and the housing type;

(4) Identify, for each proposal the number of units by household type; unit size (number of bedrooms) and structure type, and the total units;

(5) A schedule for the submission of each proposal (all proposals must be received by the field office prior to June 30 of the fiscal year for which the allocation was made).

(b) *Project planning conference.* The field office invitation will advise the PHA that a project planning conference has been scheduled for a specified date to discuss the program requirements and the PHA and field office actions related to project planning and development.

(c) *Front-end expenditures.* A PHA inside a central city allocation area is expected to provide necessary funding related to the preparation and submission of proposals. Such a PHA may request front-end funding assistance by HUD only for:

(1) Scattered-site housing involving rehabilitation under the conventional method; or

(2) Scattered-site existing housing to be purchased under the acquisition method.

(d) *ACC preparation and execution.* The ACC shall be prepared and sent to the PHA upon approval of the proposal. The PHA shall be requested to execute the ACC and return it to the field office for execution. However, if execution of an ACC has been approved to provide front-end funding assistance, the PHA shall be requested to execute the ACC and return it to the field office for execution prior to submission of the proposal.

##### § 941.403 PHAs outside central city allocation areas.

(a) *Issuance of invitation.* When funds become available for other than central city allocation areas, the field office shall invite PHAs with high rated applications in the pipeline to submit proposals pursuant to this subpart. If there are insufficient pipeline applications for a particular housing type or household type, the field office may send letters requesting PHAs to submit additional applications prior to inviting proposals.

(b) *Project planning conference.* The field office invitation will advise the PHA that a project planning conference has been scheduled for a specified date to discuss the program requirements and the PHA and field office actions related to project planning and development and to establish a deadline date for proposal submission.

(c) *Front-end expenditures.* Except as provided in this paragraph, PHAs outside a central city allocation area are expected to provide necessary funding related to the preparation and submission of proposals. Such a PHA may request front-end funding assistance by HUD only if the PHA is:

(1) A newly established or small PHA proposing to build, rehabilitate, or acquire housing in communities that are not entitlement cities under the community development block grant program;

(2) Proposing to build or rehabilitate scattered-site housing under the conventional method or proposing to purchase scattered-site existing housing under the acquisition method; or

(3) Other specific causes approved by the Assistant Secretary to permit a PHA, that would otherwise be precluded, to participate in the public housing program without front-end funding assistance by HUD.

(d) *ACC preparation and execution.* The ACC shall be prepared on the basis of the PHA application and will be sent to the PHA by the field office. The PHA shall be requested to execute the ACC and return it to the field

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office with its proposal, so that the field office can execute the ACC when the proposal is approved. However, if execution of an ACC has been approved to provide front-end funding assistance, the PHA shall be requested to execute the ACC and return it to the field office for execution prior to submission of the proposal.

#### § 941.404 Proposal content.

Each proposal shall be prepared in the form prescribed by HUD and 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) **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.

(c) **Project construction cost estimate.** For conventional projects, a preliminary project construction cost estimate based on the schematic drawings and outline specifications and current construction costs prevailing in the area. For turnkey projects, the developer's price for the project based on the deadline date specified in the PHA's advertisement for turnkey developers.

(d) **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.

(e) **Facilities.** A statement addressing the adequacy of existing or proposed facilities and services for the prospective occupants of the project 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.

(f) **Relocation.** Information concerning any displacement of site occupants, including identification of each displacee, the PHA distribution plan for notices, and the anticipated cost and source of funding for relocation benefits.

(g) **Financial feasibility.** A PHA subject to the performance funding system shall demonstrate the financial feasibility of the project by showing that the estimated operating expenses will not exceed the estimated operating income for the first fiscal year of operation. If expenses are greater than income, the PHA may consider the amount of operating subsidy that would be made available to the project under a separate or consolidated ACC. A PHA that is not subject to the performance funding system shall provide a demonstration of financial feasibility in accordance with the procedures determined by the Assistant Secretary.

(h) **Utility analysis.** An analysis of utility costs demonstrating that the best utility combination is being proposed, based on initial installation costs and long term operation and maintenance costs, energy conservation, and evidence that the selected

utilities will be available for the proposed project.

(i) **Contracts.** A copy of the proposed contract between the PHA and its design or inspecting architect and, if applicable, the PHA executed ACC.

(j) **Turnkey projects.** For projects being developed using the turnkey method, a copy of the PHA advertisement and information furnished to developers, the housing package submitted by the PHA selected turnkey developer, and a certification that the PHA selection was based on an objective rating system using such factors as site location, project design, price, and developer experience.

(k) **Acquisition projects.** For existing housing, a certification by the PHA and owner that the property was not constructed with the intent that it would be sold to the PHA.

(l) **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.

(m) **Intergovernmental Review.** New construction projects and substantial rehabilitation projects which involve: a change in land use; an increase in project density; or a change from rental to homeownership, must meet the Intergovernmental Review requirements of 24 CFR part 82. The PHA must certify that the State Single Point of Contact (SPOC) was notified, by providing a copy of the signed and dated Standard Form SF-424 with its Proposal. If there is no SPOC, or public housing development is not a program or activity selected for the State process, the PHA must submit evidence that the SF-424 was sent directly to affected state, area-wide, regional and local entities.

(n) **Special Procedures for Scattered-Site Projects.** PHAs may, in lieu of submission of the complete proposal described in this section, submit a limited proposal if: the proposal is for a project involving scattered-site acquisition or a scattered-site conventional new construction or rehabilitation development; if the proposal has been determined to be eligible for front-end funding pursuant to § 941.402(c) or § 941.403(c); and if the diversity of ownership of the properties is expected to make site control difficult. The special proposal procedures provided by this paragraph do not apply to scattered-site projects involving turnkey development. Each limited proposal shall be prepared in the form prescribed by HUD and shall include, at a minimum, the following:

(1) A project development schedule;

(2) the PHA demonstration of financial feasibility;

(3) a neighborhood map or maps, identifying the specific neighborhoods in which acquisitions are proposed ("jurisdiction-wide" proposals are not acceptable);

(4) a description of each neighborhood, identifying the range of structure types, unit sizes (number of bedrooms), ages of units, general condition, and price ranges by unit size;

(5) a description of each neighborhood, identifying its racial composition, availability of schools, shopping and social services, and transportation routes;

(6) evidence that the type of housing to be acquired is regularly available;

(7) data regarding occupancy (owner/tenant) and an estimate of relocation costs, if any;

(8) the ACC and related documents, executed by the PHA; and

(9) if applicable, a copy of the signed and dated SF-424 evidencing initiation of Intergovernmental Review (see subparagraph (m) above).

HUD shall review the limited proposal, in accordance with § 941.405, and upon approval of the proposal, HUD shall execute the ACC and permit advances for the purposes and amounts described in § 941.408(b)(3). The PHA shall select individual properties in accordance with its approved limited proposal, but shall not acquire a property or make a commitment to acquire without specific HUD site approval, including approval of work write-ups, plans and specifications, or repair lists; and a determination that the property, including the resultant total development cost, is consistent with the approved limited proposal.

(45 FR 60438, Sept. 12, 1980, as amended at 56 FR 13282, Apr. 1, 1991)

**Effective Date Note:** At 56 FR 13282, Apr. 1, 1991, § 941.404 was amended by revising the introductory text and adding paragraphs (m) and (n), effective May 1, 1991. For the convenience of the user, the superseded text follows:

#### § 941.404 Proposal content.

Each proposal shall be prepared in the form prescribed by HUD and shall include at least the following:

#### § 941.405 Technical processing and approval.

(a) **Initial screening.** The field office shall perform an initial screening to determine that all required documentation has been submitted. The field office shall advise the PHA of any deficiencies in the proposal and that additional information will be accepted if it is received by a specified date.

(b) **Technical processing.** Upon determining that a proposal is acceptable for technical processing, the field office will:

(1) Send a notification to the chief executive officer (or designee) of the unit of general local government pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439), inviting a response within thirty (30) calendar days from the date of the field office transmittal letter;

(2) Evaluate the proposal to determine compliance with all program requirements including, if applicable, the comments received as a result of Intergovernmental Review, or from the unit of general local government.

(3) Complete an environmental review in accordance with the requirements of the National Environmental Policy Act of 1969; and

(4) Determine the appraised value of the site or property.

(c) **Proposal approval.** The field office shall send a notification letter to the PHA stating that the proposal has been approved or disapproved. For approved proposals, the field office letter shall indicate the approved total development cost and the appraised

value of the site or property. The ACC will be sent to the PHA for execution or, where the PHA has already executed the ACC, the field office will execute the ACC and send a copy to the PHA.

(d) **Cancellation of fund reservation.** The field office may cancel the fund reservation if the PHA fails to develop the project within the 30 months, dating from the time of fund reservation, allowed for a start (the beginning of construction or rehabilitation), or for completion (acquisition of existing housing) pursuant to section 5(k) of the Act. During this 30-month period, the PHA may, in accordance with HUD requirements, change the site of the public housing project, or reformulate the project, provided that the change in site or reformulation results in not less than the original number of dwelling units to be constructed, rehabilitated, or acquired. There shall be excluded from the computation of the 30-month period any delay in the beginning of construction or rehabilitation of the project caused by: failure of HUD to process the project within a reasonable period of time; any environmental review requirement; any legal action affecting the project; or any other factor beyond the control of the PHA. Extensions beyond 30 months must be approved in writing by the Regional Administrator. In the event the PHA defaults on its obligations with regard to development of the project, advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose.

(45 FR 60838, Sept. 12, 1980, as amended at 48 FR 29218, June 24, 1983. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 13283, Apr. 1, 1991)

**EFFECTIVE DATE NOTE:** At 56 FR 13283, Apr. 1, 1991, § 941.405 was amended by revising paragraph (b) introductory text and (b)(2), and adding paragraph (d), effective May 1, 1991. For the convenience of the user, the superseded text follows:

**§ 941.406 Technical processing and approval.**

(b) **Technical processing.** Upon determining that a proposal is acceptable for technical processing, the field office shall:

- (1) . . . . .
- (2) Evaluate the proposal to determine compliance with all program requirements and, if applicable, the comments received from the unit of general local government;

**§ 941.406 Maximum development cost and advances.**

(a) **Maximum total development cost (TDC).** The maximum total development cost (TDC) is calculated by multiplying the number of units for each bedroom size and structure type in the project times the applicable cost guidelines for the bedroom size and structure type and adding the resulting amounts for all units in the project.

(1) The total project cost that may be approved and reserved for a proposed project at the time of the initial reservation of funds may not exceed 100 percent of the maximum TDC based on the most recently issued cost guidelines.

(2)(i) After initial fund reservation and subject to the availability of funds:

(A) A Field Office may approve costs (which include any local donations) and reserve funds for a project up to 100 percent of the maximum TDC based on the most recently issued cost guidelines;

(B) The Regional Administrator may authorize the Field Office to approve costs (which include any local donations) and reserve funds for a project up to 105 percent of the maximum TDC based on the most recently issued cost guidelines; and

(C) The Assistant Secretary may authorize the Field Office to approve costs and reserve funds for a project above 105 percent of the maximum TDC based on the most recently issued cost guidelines.

(ii) The Regional Administrator or Assistant Secretary, as appropriate, may approve increases under paragraph (a)(2)(i) of this section, if the costs are reasonable and necessary to develop a modest non-luxury project that provides for efficient design, durability, energy conservation, safety, security, economical maintenance, and healthy family life in a neighborhood environment.

(3) If project costs can not be brought within the approvable maximum TDC, the project must be submitted in the form and manner prescribed by HUD to the Headquarters Technical Review Panel. The panel will consider the extent to which cost reduction alternatives are possible to bring the project within the approvable TDC. If the project can not be brought within the approvable maximum TDC, the panel may recommend that the Assistant Secretary approve a higher TDC or terminate the project.

(b) **Development advances.** Funds shall only be advanced to the PHA after execution of the ACC by the PHA and the field office. Funds shall be advanced pursuant to a PHA requisition approved by the field office.

(1) Advances may be provided to pay for materials and services related to proposal development, such as PHA staff salaries and travel, professional services for selection of sites or preparation of invitations for housing projects under the turnkey method, site options, site engineering studies and site acquisition.

(2) For projects being developed under the turnkey method, advances prior to execution of the contract of sale shall be limited to one percent of the total development cost stated in the executed ACC.

(3) For projects being developed under the conventional or acquisition method, advances prior to recordation of the deed and the declaration of trust for sites or properties shall be limited to one percent of the total development cost stated in the executed ACC. However, after approval of the proposal by the field office, an additional amount may be advanced for site or property acquisition not to exceed the amount approved by the field office for site and property acquisition.

(c) **Termination of advances.** The field office may terminate advances if the PHA fails to develop the project in accordance with the approved project

development schedule. In the event the PHA defaults on its obligations with regard to development of the project, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose. Cancellation of fund reservation is governed by § 941.405(d).

(d) **Recapture of funds.** In the event that the development of a project is terminated by the field office, any unused or uncommitted funds (including repayments) will be recaptured.

(45 FR 60838, Sept. 12, 1980, as amended at 47 FR 39482, Sept. 8, 1982. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 41809, Oct. 24, 1988; 56 FR 13283, Apr. 1, 1991)

**EFFECTIVE DATE NOTE:** At 56 FR 13283, Apr. 1, 1991, § 941.406 was amended by revising paragraph (c), effective May 1, 1991. For the convenience of the user, the superseded text follows:

**§ 941.406 Maximum development cost and advances.**

(c) **Termination of advances.** The field office may terminate advances if the PHA fails to develop the project in accordance with the approved project development schedule. In the event the PHA defaults on its obligations with regard to development of the project, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for such purposes.

**Subpart E—Project Development**

**§ 941.501 Site and property acquisition.**

(a) **Applicability.** The provisions of this section apply to projects being developed under the conventional or acquisition methods.

(b) **Purchase agreement.** The PHA, upon approval of the proposal, shall exercise its site option and execute a purchase agreement with the owner. The purchase agreement shall reflect any conditions established by the field office such as the appraised value for the site or property or site engineering studies that must be completed to determine whether the site is suitable for development of the project.

(c) **Title.** The field office shall notify the PHA that it is authorized to take title to the site or property. The PHA shall be required to obtain a title insurance policy or other title evidence acceptable to the field office which guarantees that the title is good and marketable. The PHA shall ensure that the deed and declaration of trust in the form prescribed by HUD are promptly recorded.

**§ 941.502 Project design and execution of contracts.**

(a) **General.** The PHA, unless otherwise authorized by the field office, shall submit interim or preliminary design documents for field office approval prior to preparing and submitting the detailed construction documents. The field office shall review both the design documents and the construction documents for consistency with the proposal, to determine that all HUD design and construction standards have been met, and to ensure that the project development



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costs are reasonable and are within the applicable cost limitations.

(b) *Conventional method.* (1) The design documents and the construction documents shall be prepared in accordance with HUD criteria for approval by the field office.

(2) The project total development cost estimates (excluding site or property purchase) shall be adjusted on the basis of a commercial construction cost index to reflect actual changes in construction costs between the date the proposal was submitted and the date the construction documents are approved. An additional adjustment shall be made to reflect anticipated changes in construction costs from the date the construction documents are approved to the scheduled date for execution of the construction contract.

(3) After the Field Office has approved the construction documents and construction cost estimates, the PHA shall advertise for bids. In order to approve execution of the construction contract, the Field Office shall determine that the low bid is responsive to the PHA invitation and will result in a total development cost that does not exceed the Field Office estimate of replacement cost or the maximum total development cost approvable by the Field Office under § 941.406(a).

(4) After field office approval, the construction contract shall be executed by the PHA and the contractor and the PHA shall issue a notice to proceed with construction or rehabilitation in accordance with the construction contract and the approved construction documents.

(c) *Turnkey method.* (1) The design documents and the construction documents shall be prepared in accordance with HUD criteria for approval by the field office.

(2) The developer's price (excluding site or property purchase and interest during construction) shall be adjusted on the basis of a commercial construction cost index to reflect actual changes in construction costs between the deadline date specified in the PHA invitation for project submissions under the turnkey method and the date that the contract of sale is executed. However, such adjustments shall not be made for any time period attributable to developer caused delays.

(3) The developer's amount for interest during construction shall be adjusted to reflect the actual construction loan interest rate prevailing in the area at the time the contract of sale is executed.

(4) In order to approve execution of the contract of sale, the Field Office shall determine that the developer's price does not exceed the Field Office estimate of replacement cost, or result in a maximum total development cost in excess of that approvable by the Field Office under § 941.406(a).

(5) After field office approval, the contract of sale shall be executed by the PHA and the developer and by the field office to indicate HUD approval. The developer shall then proceed with construction or rehabilitation of the project in accordance with the contract of sale and the approved construction documents.

(d) *Acquisition method.* The field office shall determine that the PHA estimate of the project total development cost, including the acquisition price and the cost for minor repairs, is reasonable and does not exceed the field office estimate of replacement cost. After field office approval, the PHA shall purchase the property and complete the required repairs in accordance with HUD requirements.

(45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 41899, Oct. 24, 1988)

#### § 941.503 Construction requirements.

(a) *Economy.* The PHA shall complete development of the project, in accordance with the project development schedule, at the lowest possible cost, within the total development cost identified in the ACC, and consistent with HUD construction requirements.

(b) *Contract changes.* The PHA shall not agree to any changes or additions to the work required under the construction contract or contract of sale or as agreed to under the acquisition method, except as authorized by the provisions of these contracts or by the field office.

(c) *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 field office representative will periodically visit the project site to monitor PHA contract administration.

(d)(1) A prevailing wage rate determined under State law shall be inapplicable to the development of a project whenever:

(i) The development of the project is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing; and

(ii) The wage rate (including fringe benefits, if any, and basic hourly rate) determined under State law to be prevailing with respect to an employee in any trade employed in the development of a project exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade.

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

(2) Whenever paragraph (d)(1)(i) is applicable:

(i) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development of the project shall include a statement that any prevailing wage rate determined under State law to be prevailing with respect to an employee in any trade employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under

the contract whenever such prevailing wage rate exceeds:

(A) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade.

(B) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or

(C) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(ii) The PHA itself shall not be required to pay any prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) to any of its own employees who may be engaged in the development of the project; and

(iii) No prevailing wage rate determined under State law and described in paragraph (d)(1)(ii) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the development of the project.

(3) Nothing in this paragraph (d) shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable prevailing wage rate determined by the Secretary of Labor or an applicable apprentice or trainee wage rate based thereon, nor does this paragraph (d) impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(4) The provisions of this paragraph (d) shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988.

(45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 30216, Aug. 10, 1988)

#### § 941.504 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. No work shall be accepted by the PHA without prior field office approval. The final inspection will be made jointly by representatives of the PHA, the field office and the contractor or developer.

(b) *Acceptance.* If upon inspection, the PHA and the field office determine that the work is complete and satisfactory, except for work that is appropriate for delayed completion, the work shall be accepted. The PHA shall determine any hold-back for items of delayed completion, 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 field office



shall review and, if acceptable, approve the PHA determination concerning work to be accepted and the amount to be paid to the contractor or developer. The contractor or developer shall be paid for items of delayed construction only after inspection and acceptance of this work by the PHA and the field office.

(c) *Title.* If the PHA and field office determine that the turnkey developer completed the work in accordance with the contract of sale, the field office shall notify the PHA that it is authorized to take title to the completed project. The PHA shall be required to obtain a title insurance policy or other title evidence acceptable to the field office which guarantees that the title is good and marketable. The PHA shall ensure that the deed and declaration of trust in the form prescribed by HUD are promptly recorded.

(d) *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.

**§ 941.505 Completion of development.**

(a) *Initial operating period.* Total development cost shall include an amount for any net PHA operating deficit incurred during an initial operating period commencing with the date of execution of the ACC and ending on the date established by the field office pursuant to the ACC.

(b) *Actual development cost.* 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 the field office, the PHA shall submit a statement of the actual development cost. The field office 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.