

Legal Opinion: GCH-0082

Index: 2.300, 2.375, 2.296  
Subject: Section 5(h) Homeownership Program

April 16, 1993

MEMORANDUM FOR: Dom Nessi, Office of Indian Housing, PI

FROM: Robert S. Kenison, Associate General Counsel  
Office of Assisted Housing and Community Development, GCH

SUBJECT: Request for Legal Opinion - 24 CFR 905 Subpart P - Section 5(h)  
Homeownership Program

This is in response to your January 11, 1993, memorandum concerning the 24 CFR Part 905, Subpart P - Section 5(h) Homeownership Program. Specifically, you raised several issues concerning subpart P and its applicability to the Mutual Help (MH) and Turnkey III (TKY III) Homeownership programs. Subpart P codifies the provisions of the Section 5(h) homeownership program for Indian housing. Please excuse the delay in our response.

Section 905.1002 states that subpart P "applies to low-income housing owned by Indian Housing Authorities (IHAs) subject to Annual Contributions Contracts (ACCs) under the [United States Housing Act of 1937] (the Act)." MH and TKY III units are low-income housing owned by IHAs and subject an ACC under the Act. There is no statutory prohibition to applying the requirements of the 5(h) program to MH and TKY III units. However, MH and TKY III units are not subject to the requirements of subpart P. Specifically, section 905.1006 - Property that may be sold - provides that a homeownership plan may "provide for conversion of existing rental housing to homeownership or for homeownership sale of newly-developed housing." In this context it is our opinion that TKY III and MH units are not "rental units" and therefore are not eligible for sale under a 5(h) plan.

Until there is the necessary regulatory change, requests to apply the requirements of subpart P to MH and TKY III units would require a waiver of section 905.1006. We note that the Public Housing Division is currently considering a change to Part 904 to allow the application of 5(h) to TKY III public housing units.

If a regulatory waiver is granted, or if section 905.1006 is amended, an IHA would be required to replace MH and TKY II I units disposed of under the 5(h) program in accordance with section 905.1016. MH and TKY III homeownership agreements would continue in force until the consummation of the 5(h) sale, at which time they would be terminated by mutual agreement of the parties.

You should note that before a MH or TKY III unit could be sold under the section 5(h) program, the homebuyer would have to agree in writing to rescind his or her MH or TKY III Homebuyer Agreement and to purchase the unit under the 5(h) program.

