GUIDANCE FOR PHAs DEVELOPING A SECTION 32 HOMEOWNERSHIP PLAN

Introduction

Public Housing Agencies (PHAs) have the ability to develop homeownership projects tailored to meet goals specific to their locality and resident population. A summary of the various PHA homeownership programs and their regulatory requirements is included in the *Guide to Homeownership for PHAs,* which can be found on a future HUD website. The PHA should refer to the *Guide to Homeownership for PHAs* to understand its options regarding different homeownership programs and homeownership policy considerations.

This guide summarizes eligible activities under the Section 32 program and its Homeownership Plan requirements. PHAs proposing a project under Section 32 must complete a Homeownership Plan as described in Section B below. This document contains the following sections, and only describes Section 32 program-specific considerations.

A. **Section 32 Project Summary**
B. **Homeownership Plan Requirements**
C. **Supporting Documentation**
D. **Appendix 1: Completeness Review Checklist**
E. **Appendix 2: Definitions of Terms**
F. **Appendix 3: Sources and Uses Budget Instructions and Definitions**
G. **Appendix 4: Sources and Uses Budget Tool**
H. **Appendix 5: Feasibility Tool Instructions**
I. **Appendix 6: Feasibility Tool**
J. **Appendix 7: Attorney's Certification**

A. Section 32 Project Summary (24 CFR Part 906)

Overview

The Quality Housing and Work Responsibility Act (QHWRA) permits PHAs, through Section 32 of the U.S. Housing Act of 1937, to make public housing dwelling units available for purchase by low-income families as their principal residence. Under Section 32, a PHA may (1) sell all or a portion of a public housing development to eligible public or non-public housing residents, or (2) provide Capital Fund assistance to public housing families to purchase homes, and (3) provide Capital Fund assistance to acquire homes that will be sold to low-income families. Section 32 generates an exception, allowing the Public Housing Capital Fund to be used to acquire units for sale that will not be put under public housing ACC contracts. This does not apply to the use of the Capital Fund by the PHA to build or substantially rehabilitate units that are not public housing for sale under Section 32. Although public housing units that are newly constructed or substantially rehabilitated may be sold under Section 32, such construction and rehabilitation by the PHA is not covered under this section, but rather is governed by the public housing development and modernization regulations. The final Section 32 rule replaces the Section 5(h) rule.

Eligible Program Activities

PHAs implementing a Section 32 program may use their funds to provide the following services:

1. subsidy to public housing residents (using Capital Funds or program income) or other low-income families (using only program income) in the forms of (a) downpayment or closing cost assistance, (b) subordinate mortgages, and/or (c) below-market financing;
2. acquisition of existing homes (or homes built for the PHA by a third party *24 CFR 906.41(2)*)using Capital Funds for the purpose of sale to income-eligible purchasers without adding these units to the Annual Contributions Contract (ACC);
3. sale of public housing rental (ACC) units to income-eligible purchasers; and
4. operation of a lease-purchase program.

Key Program Features

- *PHAs must use Davis-Bacon wages for all construction activity.* Except in specific cases of non-routine maintenance, Davis-Bacon prevailing wage rates apply to all construction activities under the program.

- *Section 32 can be implemented in conjunction with the Section 8(y) program.* The Section 8(y) program is described separately in the PHA's Section 8 Administration Plan, if applicable to the PHA. See the Housing Choice Voucher (Section 8) homeownership program summary below for details regarding implementation of a voucher homeownership program. 8(y) can only be used in connection with units that are not currently under ACC or that are released from the ACC as a result of the sale of the unit. Lease to purchase programs would not be eligible for 8(y) during the lease phase.

- *Nonpurchasing public housing residents may be displaced.* In selling a public housing unit under a homeownership program, the PHA or Purchase and Resale Entity (PRE) must initially offer the unit to the resident occupying the unit if they meet the eligibility requirements. The current residents of the public housing units have the option of applying to the program in order to purchase their unit, relocating to another comparable unit, or receiving tenant-based assistance. PHAs must provide the resident with notice 90 days prior to the date of the sale of their unit, counseling, relocation expenses, and comparable replacement housing options. The right of first refusal does not extend to residents in non-public housing units.

Eligibility Requirements

- *Eligible purchasers may earn up to, but not exceed 80% of Area Median Family Income (AMI).* Except in the case of a PHA's offer of first refusal to a resident occupying the unit, a PHA must certify that the applicants' income is not over 80% of AMI at the time the contract to purchase the property is executed.

- *The PHA may sell units to a PRE.* The PHA must demonstrate that the PRE has the necessary legal capacity and practical capability to carry out its responsibilities under the program and sell the units within five years from the date of acquisition; otherwise the PRE must transfer ownership of the units back to the PHA. The PHA's homeownership program also must contain a written agreement and the applicable legal documentation that specifies the respective rights and obligations of the PHA and the PRE.

- *Affordability standards must be met for the purchaser.* On an average monthly basis, the estimate of the sum of the applicant's payments for mortgage principal and interest, insurance, real estate taxes, utilities, maintenance and other recurring homeownership costs will not exceed the sum of 35% of the applicant's adjusted income and any subsidy that will be available for such payments.

- *Principal residence requirement.* The dwelling unit sold to an eligible family must be used as the principal residence of the family.

- *PHAs must require purchasers to pay a minimum downpayment.* Each household purchasing housing must use its own resources to contribute an amount of the down payment that is not less than one percent of the purchase price of the housing.

- *Other eligibility restrictions.* A PHA may establish additional limitations for households to purchase housing. Such requirements may include employment, no past criminal activity, participation in homeownership counseling programs, or other requirements.

Recapture and Anti-Speculation Restrictions

- *Anti-speculation.* A PHA must have a policy that provides for retaining all or a portion of the gain from appreciation generated by the resale of the property to the extent that there are net proceeds if the house is sold within five years after purchase. The PHA may not recapture gains from appreciation if the home is resold over five years from the initial purchase. Gains from appreciation is defined as financial gain solely attributable to the home's appreciation over time and not attributable to below-market financing or government-provided assistance (recapture of that subsidy is discussed in recapture below). The anti-speculation provision must be recorded as a deed restriction or a restrictive covenant. The recapture amount can be one that the PHA considers appropriate under the guidelines in this section.

- *Recapture of subsidy*. The PHA must implement a stated policy to recapture upon resale government-provided assistance and/or below-market financing made to the purchaser to the extent that there are net proceeds. This includes the PHA downpayment, closing cost assistance, subordinate mortgage financing, or below-market financing (i.e., sale the unit for less than appraised value of the home). The PHA may recapture a portion or all of its subsidy provided to the purchaser even for a period of longer than five years. [PHAs that elect to take back none of the subsidy must include that in a stated recapture policy.] This provision must be recorded in the appropriate form of title restriction(s).

- *Resale.* Section 32 regulations do not require a PHA to implement a resale provision limiting resale to low-income buyers.

Summary of Section 32 Regulatory Restrictions	
Program Status	The newly issued ruling for Section 32 of the 1937 Act revises and replaces the existing 5(h) regulations. HUD will no longer accept new 5(h) plans. Existing 5(h) programs will continue to be governed by 24 CFR Part 906 dated April 1, 1999, or may be revised in accordance with Section 32. *All citations below for Section 32 below refer to the April 1, 2003 edition of 24 CFR Part 906.*
Eligible Program Activities	1. The PHA may sell newly constructed, rehabilitated, or existing public housing units to public housing and other low-income residents. This program does not govern the new construction or rehabilitation of public housing units; rather, the PHA must undertake these activities in accordance with 24 CFR 941. 2. The PHA, under Section 32, may also acquire existing homes using Capital Funds for sale to income-eligible purchasers without adding these units to the ACC. 3. The PHA may provide direct financing to purchasers for (a) downpayment assistance, (b) closing cost assistance, (c) counseling, and (d) subordinate mortgages (including a loan-to-purchaser only program). 4. The PHA may operate a lease-purchase program for ACC units developed or acquired via any of the above-mentioned methods. *24 CFR Part 906.5*
Purchaser Requirements	
Eligible Purchasers	The PHA may sell units directly to public housing residents, low-income residents, or to another entity for resale to low-income families (Purchase and Resale Entity). *24 CFR Part 906.11 and 906.13*
Income	Public or non-public housing residents earning up to 80% AMI are eligible to purchase a home. There is an exception to this low-income restriction for current public housing residents offered the right of first refusal. The applicants monthly payments for mortgage, PITI, maintenance, and other regularly recurring homeownership costs (e.g., condominium fees) may not exceed 35% of the applicants adjusted income as defined in 24 CFR 913 plus any other subsidy used for monthly payments. *24 CFR 906.15 (a)*
Downpayment	The PHA must establish downpayment requirements and at least 1% of the purchase price of the house must come from the resident’s own funds. *24 CFR 906.15 (2)*
Previous Homeownership	Income-eligible households that have owned a home may qualify to enroll in the program.
Other Eligibility Restrictions	The PHA may establish additional limitations to purchase housing. Such requirements may include evidence of regular income, no past criminal activity, participation in homeownership counseling programs, or other requirements/restrictions. *24 CFR 906.15 (d)*
Program Requirements	
Residency Requirement	The homeowner must use the unit as his/her principal residence. *24 CFR 906.15 (b)*

Summary of Section 32 Regulatory Restrictions	
Davis-Bacon Wages	Davis-Bacon wage rates apply to all rehabilitation and construction activities except in cases of qualifying non-routine maintenance. *24 CFR 906.37*
Recapture restrictions: A. Subsidy B. Gain from Appreciation	 If the purchaser resells the home within five years of initial purchase, the PHA must recapture a portion of or its entire subsidy provided to the purchaser (i.e., downpayment/closing cost assistance, PHA subordinate mortgage, and/or below-market financing) to the extent that there are net proceeds. After the initial five-year period, the PHA may recapture some or all of it subsidy provided to the purchaser and may not capture any gain from appreciation (see Anti-Speculation below). This provision must be recorded in the appropriate form of title restriction(s). *24 CFR 906.27 (a)(3-4), (c)* The PHA must implement an anti-speculation provision to recapture share all or a portion of the gain from appreciation to the extent that there are net proceeds if the home is resold within five years from the initial purchase. It may not capture gains from appreciation after the initial five-year period. Gains from appreciation is defined as financial gain solely attributable to the home's appreciation over time and not attributable to below-market financing or government-provided assistance. This provision must be recorded as a deed restriction or a restrictive covenant. *24 CFR 906.27 (a)(4)*
Use of Proceeds: A. PHA direct sales B. PRE sales	 The PHA must use the proceeds from the sale of units to fund replacement housing or to further its mission of providing quality affordable housing to income-eligible households. *24 CFR 906.31(a)* The PHA may require the PRE to return the net proceeds to the PHA, or permit the PRE to retain the net proceeds for use to further low-income housing purposes. *24 CFR 906.31(b)*
Market Study	If the homeownership plan permits for acquisition of non-public housing for homeownership, the plan must include a market analysis of the potential purchasers for the homeownership units. If HUD funds are used to build or acquire units, it should be demonstrated to the Field Office that a market exists for the units. New units temporarily put under ACC prior to sale should be packaged into a development acquisition plan for review by the Field Office. *24 CFR 906.41(a)(8)*

Summary of Section 32 Regulatory Restrictions	
Marketing Strategy	The homeownership plan must describe the number of income-qualified current residents interested in purchasing a home and the plan for consultation with residents during implementation. If the homeownership plan permits the purchase of vacant units by persons not currently in public housing, receiving Section 8, or on the existing PHA waiting list, the program must include an affirmative fair housing marketing strategy that reaches out to members of underrepresented groups. *24 CFR 906.39(d)*
Non-purchasing Residents, ACC units	If the PHA or PRE is selling a public housing unit, it must first offer that unit to the resident occupying that unit, if any. Public housing residents who are not interested in purchasing their unit or are not eligible, are entitled to a 90day notice, counseling, relocation expenses, and comparable housing. *24 CFR 906.23*
Displaced residents, non-ACC units	Residents of non-public housing units acquired for sale do not have to be offered the first chance to purchase the unit. However, the Uniform Relocation Act applies for displaced residents of non-public housing units
Financing Restrictions	Housing authorities may provide financing for all eligible families, but they must designate funding sources according to whether the purchaser is a public housing or non-public housing resident. The Capital Fund Program may be used to provide financial assistance only to public housing residents. Other income (e.g., loan repayments, proceeds from the sale of units, program income) may be used to provide financial assistance for non-public housing eligible purchasers. *24 CFR 906.5*
Resident Consultation	The PHA must consult with residents of the developments involved and the Resident Advisory Board, unless the action is already included in the PHA Agency Plan. Housing authorities, which are exempt from this PHA plan requirement, such as high performers, agencies below the size threshold, and Moving-to-Work agencies, must still conduct the resident consultation under Section 32. *24 CFR 906.39 (3)(g)*
Record Keeping	The PHA is responsible for keeping and maintaining all relevant records and documentation regarding homeownership activities. The obligation must also be passed on to any third parties assisting the PHA in its homeownership activities (i.e. PRE). The PHA must submit an annual sales report to HUD until all planned sales are complete. Unit records in PIC should be maintained, and the proposed sale and eventual removal of ACC units from the public housing inventory must both be submitted in the PIC system by the PHA. *24 CFR 906.33*
Section 8(y)	Section 8(y) homeownership assistance may be used in conjunction with a homeownership program under Section 32 provided the family meets the requirements of both programs. Section 8(y) is not used in connection with lease purchase programs prior to sale. *24 CFR 906.5(3)*
Other	A PHA may also elect to implement a lease-purchase program under Section 32. *24 CFR 906.39(a)*

B. The Homeownership Plan

The specific requirements for the preparation of a homeownership plan under Section 32 are set out below. PHAs should submit the Plan to the HUD Special Applications Center (SAC) in Chicago. Non high-performing PHAs must state their intent to submit a homeownership plan to HUD in the Annual Plan. HUD will not review any homeownership plan not addressed in the PHA Agency Plan. (High-performing PHAs are exempt from this rule.) The required items, along with supporting documentation outlined in 24 CFR Part 906.39, are intended to provide HUD with all the necessary information to assess the workability and legality of the proposed program and the PHA's capacity to implement it. Generally, the homeownership plan should also serve as a roadmap for the program's implementation.

Essential Criteria of a Homeownership Plan

As described in 24 CFR 906.45, HUD will use four key criteria to assess Section 32 homeownership plans:

1. *Feasibility*: The program must be practically workable, with sound potential for long-term success. Simply put, the plan should make sense for the PHA to implement in its community. All the necessary components including sufficient demand for the proposed housing and adequate funding to cover program costs should be in place. Some questions that a PHA may want to consider as it assembles the content of its homeownership plan are:
   - Is there an adequate supply of eligible residents who can afford to purchase a home at the assumed price? Are there sufficient funds to enable purchasers with targeted incomes become homeowners? The SAC expects that as a general rule there will be at least two eligible families for each home that will be sold, based on family composition and income.
   - Can the units be rehabilitated, constructed, acquired, or financed at a reasonable cost?
   - Are partnerships and services in place to ensure long-term success for participants in this project?
2. *Legality:* The program must be consistent with all applicable federal, state, and local statutes and regulations and existing contracts law, including the requirements of 24 CFR Part 906.45. The PHA must include a letter from the housing authority's legal counsel attesting to the legality of the proposed homeownership plan to HUD. The sample closing documents should not only meet federal, state, and local laws, but should also include protections against fraud and windfall profits accruing to the seller. Such protections must include an anti-speculation clause, primary residence requirement, and recapture provision for PHA subsidy. (These protections are binding to the PRE selected by the PHA as well.)
3. *Documentation:* The program must be complete and clear enough to serve as a working document for implementation, as well as be a sufficient basis for HUD review. The plan should be internally consistent and reflect the PHA's careful consideration of its elements. Supporting documentation that substantiates the claims and goals of the program should be included in the submission.
4. *PHA track record in implementing homeownership programs:* The PHA (and any other entity with substantial responsibility for implementing the homeownership program) must demonstrate its commitment and capability to successfully implement the homeownership program. PHAs should describe successes in related activities including similar homeownership programs or modernization and development projects. If the plan includes a role for a purchase and resale entity (PRE), that entity must also demonstrate its experience in marketing to and working with income-eligible homebuyers. The key is to demonstrate the collective capacity of the program participants.

5. *Program staff experience.* The PHA should describe the qualifications and experience in homeownership or similar programs of staff that will be working on this project.

Components of the Homeownership Plan

In addition to the above-listed criteria all homeownership plans should include narrative and supporting documentation detailing specific requirements. These requirements include the following (24 CFR Part 906.39):

A. Method of Sale

In order to introduce HUD to the homeownership plan, the PHA should provide a succinct overview of the number of units to be sold and the method of sale (e.g., fee simple, lease-purchase, sale of cooperative share). If the PHA is proposing a lease-purchase project, it should describe the terms of the lease-purchase agreement in this section.

B. Property description

The homeownership plan should include narrative along with appropriate supporting documentation (see Section C. Supporting Documentation) that describes in detail the property/properties to be included in the program. The specificity of description will vary according to the type of project the PHA wishes to implement as noted below. (NOTE: an application for sale that includes ACC units is made through the Public Housing Information Center (PIC).

(1) *If the program involves only financing assistance* to the household purchasing the unit, the PHA need not specify property addresses, but it must describe the area(s) in which the assistance is to be used. Description should include the physical, socio-economic, and zoning characteristics of the area(s) in which the homes are to be sold under the plan.

For example, "The XYZ Housing Authority intends to sell homes in areas of less concentrated poverty than those in which public housing residents currently live. Specifically, Smithtown, Jonesville, and Rockland neighborhoods are emerging areas with active neighborhood councils that are encouraging small business to locate to these primarily residential districts. Rates of occupancy and homeownership have been increasing in the past five years in Smithtown and Rockland, and this effect is spreading into Jonesville as well . . . [provide specific census data or socio-economic break-down]."

(2) *If the PHA plans to sell existing or newly constructed public housing*, it must describe the property/properties in detail. This includes the project number of the property or street address if there is no project number, the number of units, unit types and number of bedrooms. The plan should also describe the conditions and fair market value of the units.

(3) *If the PHA wishes to acquire units to sell under the program that will not be public housing*, it must submit an acquisition proposal as described in 24 CFR Part 906.41 which must be approved by the local HUD office before the homeownership plan is implemented. (Note that the acquisition costs are limited by the housing cost cap limit. The most recent cost cap guidance can be found in periodic PIH Notices, which are available on-line at http://www.hudclips.org

The acquisition plan should include:

- a description of the housing to be acquired, including number of units, unit types, number of bedrooms, and any non-dwelling facilities;
- PHA certification that the property to be acquired was not or is not being constructed in violation of the Davis-Bacon Act;
- a description of the general location of the properties to be acquired and, if known, the specific street addresses of the properties;
- a budget for acquiring the project including relocation expenses, closing costs, and sources of funds;
- where sites are identified, an appraisal of the proposed property by an independent, state-certified appraiser;
- an acquisition schedule; and
- where sites are identified, all available environmental information on the properties.
- a market study

C. Repair or rehabilitation

If the PHA plans to sell existing public housing rental units or acquire units that need repair, the homeownership plan should describe the PHA's process for assessing and implementing any repair or rehabilitation to meet federal, state, or local requirements such as lead-based paint abatement or accessibility features if requested (24 CFR Part 906.7). The plan should describe the extent of the repair that needs to be conducted on each property (where known) and the estimated costs of that repair. The repair plan should also be consistent with the assessment of the physical condition of the property that is included in the supporting documentation (see Section C of the Supporting Documentation).

D. Purchaser eligibility and selection

The plan should contain a clear description of eligibility criteria governing the program. The PHA may establish priorities for selecting potential homeowners that further the program's goals. These priorities may vary according to whether the PHA wishes to mix incomes in the neighborhood or to allow lower-income public housing residents to become homeowners. However, the PHA must restrict eligibility to 80% AMI corresponding to participant's household size (with exception of the PHAs offer of the right of first refusal to residents currently occupying public housing units to be sold under the project). The PHA may add further restrictions such as minimum income corresponding to household size, employment and credit requirements, downpayment requirements beyond the 1% minimum, restrictions on prior ownership, homeownership counseling, and any other category. The eligibility requirements should be consistent with the PHA's goals for the homeownership program. For example, if the PHA wants to sell existing public housing units to low-income households, it should consider whether homeownership counseling should be a requirement for the program.

Further, the plan should clearly describe the standards and procedures for processing the homeownership applications, the documentation applicants must submit, and the review criteria for selection of purchasers. These standards and procedures must include such requirements as income eligibility, owner-occupancy, and financial capacity of potential buyers. Note that the applicants monthly payments for mortgage and housing expenses (i.e., principal and interest, taxes, insurance, maintenance, utilities and other regularly recurring homeownership costs (e.g., condominium fees)) may not exceed 35% of the applicants adjusted income plus any other subsidy used for monthly payments (24 CFR 913).

If the proposed plan allows for participation by families not currently residing in public housing or receiving Section 8 assistance (or not already on the PHA waiting lists), the program must include an affirmative fair housing marketing strategy. Specifically, this strategy should describe how the PHA (or PRE) will inform non-public housing, income-eligible households of their eligibility to apply, and make special outreach to solicit applications from those in the housing market who are least likely to apply. If the homeownership plan delegates the sale of units to a PRE, the plan should clearly identify the PRE and its agreement to comply with the above fair housing marketing strategy (24 CFR Part 906.39(d)).

E. Sale and financing

PHAs can make homes affordable to low-income buyers through below-market financing (sale of unit for less than appraised value) and provision of assistance directly to purchasers. In order to protect these forms of subsidy, the PHA should also consider what kinds of anti-speculation, resale, and/or recapture provisions it wishes to implement. An *anti-speculation provision* limits the amount of gain upon sale the subsidized buyer can realize due to appreciation of the property. *Recapture provisions* outline the repayment terms of a subordinate mortgage upon the original purchaser's resale of the home. *Resale provisions* restrict the resale of the home to low-income buyers.

In accordance with 24 CFR 906.27 (a)(3-4) and (c), the PHA may recapture upon resale of the home a portion or all of PHA-provided subsidy the purchaser received (in the form of downpayment, closing cost, subordinate mortgage, or below-market financing) to the extent that there are net proceeds. The PHA may recapture this subsidy if the home is resold. This restriction must be recorded in the appropriate form of title restriction(s). The PHA must determine the share it will recapture according to its goals.

The PHA must implement an anti-speculation provision to recapture all or a portion of the gain from appreciation if the home is resold within five years from initial purchase. As stated in 24 CFR 906.27(a)(4), appreciation is defined as financial gain solely attributable to the home's appreciation over time and not attributable to below-market financing or government-provided assistance. The PHA must determine the portion of its sharing in appreciation according to its stated goals. This provision must be recorded as a deed restriction or a restrictive covenant.

The PHA may, but is not required by Section 32 of the Act to, establish a resale restriction. This would be recorded in a deed running with the land and would require that the home be resold for an established period of time (e.g., 30 years) to an income-eligible purchaser. If the PHA chooses to implement this restriction, it should include a clause whereby the PHA will purchase the home upon resale if the seller cannot reasonably obtain an income-eligible purchaser.

This section of the homeownership plan should fully describe the kind of subsidies (if any) to be provided to purchasers and the terms of recapture. It should include a description of the type(s) of assistance being provided, how much is being provided to each income tier, who is providing it, as well as the requirements and restrictions that must be met. The financial terms of loans and/or grants, front and back-end ratio restrictions for first mortgages, anticipated sales prices, and resale and recapture restrictions should also be fully described. This includes subsidy limits (which should vary based on household income and household size), terms of forgiveness of loans, availability of local grants/loans such as HOME or CDBG, and sources of funds for these subsidies.

As the PHA considers what kind of anti-speculation, recapture, and/or resale provisions to include in its homeownership plan, it should first consider the supply, demand, and condition of the housing units in consideration. If the market values of the homes in the area are rising, the PHA may choose to collect a greater portion of the gain from appreciation upon resale within the first five years. If, however, the PHA is selling homes in a weak market, it may want to allow a homeowner to realize a greater portion of the appreciation on the home upon resale. Similarly, where the PHA is providing a subsidy to the purchaser, the PHA should consider whether it would like to recapture the entire amount provided, or forgive the subsidy over a period of time.

The tables below provide a sample model to calculate subordinate mortgage and below-market financing amounts and to establish anti-speculation and recapture provisions.

Sample Rationale for PHA Subsidy:

Based on the market conditions in the area, the XYZ Housing Authority wishes to encourage stability by providing incentives for the buyer to remain in the home. It will therefore forgive its second mortgage to the purchaser over time. To make the unit more affordable to low-income purchasers, the PHA will offer the ACC rental units for less than appraised value (also known as below-market financing). To determine the amount of below-market financing and second mortgage is required for the sale of a unit to Jane Doe, a public housing eligible purchaser, the XYZ authority has created the following table:

PHA Subordinate Mortgage Analysis	
Fair Market Value (appraised value of existing ACC rental unit)	$90,000
Sale Price (PHA-determined below-market sale price)	$70,000
First Mortgage proceeds (1st mortgage amount based on purchaser's income)	$52,000
Downpayment (5% from purchaser at least 1% from purchaser's funds)	$3,570
Closing Costs (from local downpayment/closing cost assistance)	$3,000
PHA Mortgage Needed (Fair Market Value – 1st Mortgage – downpayment)	**$14,430**
Total PHA Subsidy Required	
Second Mortgage	$14,430
Below Market Financing (appraised value – sale price)	$20,000
Total PHA Contribution	**$34,430**

PHA Recapture Provision

Because the XYZ Housing Authority is implementing its homeownership program in a stable market where large gains on home values are not anticipated, it has decided to forgive the PHA subsidy (subordinate mortgage plus below-market financing) at a rate of 10% per year. The XYZ Housing Authority calculates the recapture schedule below:

Sample Calculation of Forgiveness:

Year of Resale	Rates of Forgiveness	Amount of PHA Recapture
Within year 1	0%	$34,430
End of year 1	10%	$30,987
End of year 2	20%	$27,544
End of year 3	30%	$24,101
End of year 4	40%	$20,658
End of year 5	50%	$17,215
End of year 6	60%	$13,772
End of year 7	70%	$10,329
End of year 8	80%	$6,886
End of year 9	90%	$3,443
End of year 10	100%	$0

PHA Anti-speculation Provision

In accordance with 24 CFR 906.27(a)(4), the XYZ Housing Authority has elected to capture 50% of the gains from appreciation, if the home is resold within five years of initial purchase. "Gains from appreciation" is defined as financial gain solely attributable to the home's appreciation over time and not attributable to below-market financing or government-provided assistance. This provision is recorded in a deed restriction that runs with the land.

In order to determine how much of Jane Doe's net proceeds to claim, the XYZ Housing Authority has taken into consideration the following factors:

1) The aggregate amount of assistance provided under the homeownership program to the household (in this case, the XYZ Authority provided $34,430 total subsidy to Jane Doe).
2) The contribution of equity by the purchasing household;
3) The period of time elapsed between purchase by the homebuyer under the homeownership program and resale by the homebuyer;
4) The reason for resale;
5) Any improvements made by the household purchasing under the program;
6) Any appreciation in the value of the property; and
7) Any other factors that the PHA considers appropriate.

The XYZ Housing Authority has decided to share the 50% of the gains from appreciation if the home is sold within the first five years. If, for example, Jane Doe chooses to sell her home after three years, the XYZ Housing Authority is entitled to 50% of the net proceeds. In order to determine the net proceeds on the sale, the XYZ Housing Authority has made the following calculation.

Sample Calculation of Net Proceeds:

Resale price	$85,000
Owner investment (first mortgage + downpayment)	($55,570)
Value of improvements made by the initial purchaser	($ 0)
PHA provided second mortgage (40% forgiven after year 4)	($20,658)
Net proceeds (to be shared 50/50 between XYZ HA and Ms. Doe)	$8,772

F. Consultation with residents and purchasers

Consistent with all mixed-finance transactions, the PHA and its partners are expected to work closely with the residents throughout the planning and implementation of the program. If the PHA intends to sell existing public housing, the PHA must provide a description of input obtained during the resident consultation process as well as a plan for consultation with purchasers during the implementation stage. In this section, the PHA should describe consultation with the residents affected, and/or consultation with Resident Advisory Board or Boards (as required by the PHA Annual Plan) with regard to submission of a homeownership plan to HUD. Housing Authorities that as high performers, Moving-to-Work agencies, or those defined as small PHAs, are exempt from this Agency Plan requirement, still are obliged to carry out and describe resident consultations as part of a Section 32 homeownership program.

In addition to being a venue for information gathering, the consultation process is also a way of conducting marketing and outreach for the program. Information garnered from the consultation and input process with residents and purchasers is a key factor in determining the need for and interest in a homeownership program. This consultation may help shape program design, building design and amenities, timing, and the need for complementary programming (e.g., credit counseling, homeownership training, property maintenance training, etc.). This feedback also aids the assessment of the overall feasibility of the program, the likely absorption rate of units sold, and the identification and targeting of likely purchasers.

Where the PHA is selling existing public housing units, the PHA may include as supporting documentation to the homeownership plan agendas, sign-in sheets and minutes from resident and/or community-wide meetings that specifically address the proposed homeownership program.[1] The plan may also describe the process for convening additional meetings at key junctures.

G. Counseling

In this section, the PHA should describe its plans and requirements regarding homeownership counseling for eligible purchasers. PHAs do not have to establish counseling as a condition of eligibility, but given the challenge and complexity of the transition from renting to homeownership, HUD strongly recommends the plan include on-going homeownership counseling and training programs

[1] For those PHAs using HOPE VI grants for their homeownership plan, the documentation of resident consultation for the HOPE VI application is sufficient.

to purchasers. These programs are often crucial for the long-term success of the homeownership programs. The best programs provide a continuum of service to the households including the provision of counseling services to prospective homebuyers (e.g. credit enhancement, budgeting, maintenance responsibilities, etc.), the provision of direct assistance such as a soft second mortgage, and on-going post-purchase counseling. Assisting new owners to understand and manage budgeting, maintenance and repairs, and other responsibilities of homeownership is critical. This is a good opportunity for PHAs to partner with local non-profit agencies that provide homebuyer counseling services.

PHAs should describe the experience of the counseling provider, the length of counseling course, topics covered, requirements for successfully completing the course, and funds (if any) allocated for provision of counseling.

H. Sale via Purchase and Resale Entity (PRE)

Section 32 permits the sale of units directly to low-income public or non-public housing residents or to a PRE, which in turn must resell them to low-income households. A Resident Management Council (RMC) may qualify as a PRE. If a PRE is used, the homeownership plan must include the firm's qualifications, marketing plan, and a description of that entity's responsibilities as well as information demonstrating that the requirements of 24 CFR Part 906.19 have been met (or will be met in a timely fashion).

The PRE must meet the following requirements:

- Demonstrate legal and practical capacity;
- Sign written agreement specifying rights and responsibilities of the PHA and PRE;
- Provide assurances regarding compliance with the program;
- Implement deed restrictions on acquisition and resale of units;
- Protect against fraud and/or misuse;
- Provide limitations on PRE administrative, overhead, and compensation/profit;
- Produce evidence of adequate record keeping and reporting;
- Ensure non-discrimination against eligible purchasers;
- Sell units only to low-income households;
- Agree to transfer of ownership of units back to the PHA if the PRE cannot sell the units within five years.

I. Non-purchasing residents

1. ACC Units. In accordance with 24 CFR 906.23, the PHA must offer the first right of refusal to eligible residents occupying public housing units that are to be sold. While the resident occupying the unit does not have to meet the low-income requirement, he/she does need to satisfy any other

eligibility requirements that the PHA may choose to establish for its homeownership project. If the public housing resident does not exercise the right of first refusal, the PHA must notify the resident of his/her relocation rights, including the right to comparable housing, as outlined in 24 CFR 906.23.

2. Non-ACC Units. Similarly, PHAs offering for sale occupied non-public housing units, must offer residents of those units relocation assistance in accordance with provisions of the Uniform Relocation Act (URA), which differ in some respects with the protections afforded public housing occupants displaced by a Section 32 program. . The homeownership plan must include a relocation plan in conformance with the URA and a description of how it will fully comply with these protections for non-purchasing residents.

The PHA should allocate sufficient funding to cover these anticipated expenses.

J. Sale proceeds

In accordance with 24 CFR Part 906.31, the PHA should provide an estimate of the sale proceeds (i.e. amount a PHA may recapture of its subsidy to purchasers plus the gain from appreciation upon purchaser resale of units) and an explanation of how the proceeds will be used. The PHA must direct proceeds for purposes relating to low-income housing that are in accordance with its homeownership plan (see 24 CFR Part 906.31). Such program funds may be used to provide financial assistance to income-eligible, non-public housing and/or public housing residents. Examples of eligible uses of such funds are: to fix up and administer HA-owned low-income housing, to acquire ACC or non-ACC units, to provide homebuyers help in meeting temporary mortgage arrearages, to provide non-amortizing soft second mortgages, to offer housing counseling, and to provide down payment or closing cost assistance. The plan should explain the nature of the uses to which proceeds will be put. If the homeownership plan utilizes a PRE, the PHA may opt to have the PRE return sale proceeds to the PHA or permit the PRE to use them for low-income housing purposes.

K. Records, Accounts, and Reports

The plan must provide a description of the PHA's (and PRE's, if applicable) record- keeping, accounting, and reporting procedures that will be used. According to 24 CFR Part 906.33, the PHA is "responsible for the maintenance of records (including sale or financial records) for all activities incident to the implementation of the HUD-approved homeownership program." If a PRE is used, the PHA must ensure that the PHA's obligations are passed on to the entity and any other third parties involved in the program. All books and records are subject to inspection and audit by HUD and the General Accounting Office (GAO).

Specifically, the PHA or PRE should keep a record of 1) minutes, agendas, and sign-in sheets from resident meetings regarding the homeownership plan, 2) any MOUs regarding the implementation of the homeownership plan, 3) procurement of and contracts with partners, 4) files for each purchaser that includes pay stubs, tax returns, credit report, log of consultations, action plan, verification that the home purchased meets HUD's housing quality standards, down payment and closing costs, and any other relevant information, and 5) relocation notices to public housing residents (if applicable). The PHA must report their sales through the Public and Indian Housing Information Center (PIC) and to the Field Office each year in the Annual Plan until all planned sales are completed.

L. Budget

As part of the information designed to demonstrate the financial feasibility of the proposed homeownership program, the PHA's plan must provide a comprehensive budget estimate that identifies all of the sources of funds (e.g. federal, state, local, private lenders, homeowner equity, etc.) for sale of the public housing or acquired non-public housing units. Under the uses, the budget should include any anticipated rehabilitation or repair costs based upon information derived from the physical assessment of the properties, and any PHA financing assistance, and costs for implementing the program. While this section of the plan should account for the total anticipated amount the PHA would provide in direct financial assistance to homebuyers (including subordinate mortgages, below-market financing, and/or downpayment / closing cost assistance), Section E, Sale and Financing should detail the PHA's restrictions and procedures for direct financing to the purchaser.

The budget uses also need to include all soft costs such as staff time, administration, relocation, counseling, outreach, bank charges, sale-related legal expenses, developer's fee, construction fee, and architect's fee (see the budget discussion in Appendix 3). The budget and the accompanying narrative should demonstrate efficient use and sufficient leveraging of funds as well as the PHA's ability to proceed once HUD approval is secured.

M. Timetable

Critical to the homeownership plan is a realistic timetable for implementation of the proposed program. The PHA is expected to estimate how many units it plans to sell each year and the timing of financing to support that plan. At a minimum, the schedule should include the major milestones associated with the plan:

- resident meetings and other consultations;
- when each source of funding will be secured;
- estimates by year of the number of units to be:
  - acquired and/or
  - rehabilitated and
  - sold
- the marketing and outreach process; and
- the duration and provision of homeownership counseling and training.

C. Supporting Documentation

In accordance with 24 CFR part 906.40, PHAs submitting Section 32 homeownership plans should provide HUD the following supporting documentation:

1. **PREs**. If the PHA is utilizing a PRE, the plan should include the following:
   - Organizational documents of the PRE;
   - Regulatory and Operating Agreement between the PHA and PRE regarding the provision of operating

subsidy and operation of public housing units prior to sale of the units to purchasers;
- Management agreement and plan;
- Financing documents (if any);
- Operating pro forma describing use of operating subsidy during period of PRE's ownership;
- Mixed-finance ACC Amendment governing these units;
- Deed restriction or covenant running with the land assuring that the PRE will operate the units in accordance with public housing laws and regulations including 906.19 of Section 32 regulations;
- Bond for repairs or proof of insurance to cover any damage to the property during the period of PRE ownership and operation; and
- Any other materials required by HUD.

2. **Physical Assessment.** The PHA should include an assessment of the physical condition of the property, based on the standards specified in 24 CFR Part 906.7. In order to be able to sell any property under the homeownership program, the property must first meet local code requirements (and/or Section 8 HAP standards per 24 CFR Part 882). The property must also meet the requirements for elimination of lead paint hazards under 24 CFR Part 35, subpart C, as well as any physical accessibility issues arising under 24 CFR Part 8 (although this will apply only if a request is made by the buyer). An architect, cost estimator, or engineer with significant related experience in the construction trades and in cost estimating should prepare this plan.

3. **Feasibility.** A statement demonstrating the feasibility of the program based on an analysis of data including purchase prices, costs of repair and/or rehabilitation, accessibility costs (if applicable), homeownership costs, family incomes, availability of financing, and the extent to which there are eligible families who are expected to be interested in purchase. See Appendix 5 for instructions on using the Feasibility Tool set of spreadsheets made available on the SAC website. Typically, the Special Applications Center looks to see if a PHA can identify eligible purchasers that number twice the amount of units it is proposing to sell.

4. **PHA performance in homeownership.** The PHA (and PRE, if applicable) should submit a statement outlining its experience and ability to successfully carry out the homeownership program as well as information on the administration of the program. A PHA that has not previously implemented a homeownership program for low-income households must submit a statement describing its experience in implementing public housing modernization and development projects under 24 CFR Part 941 and 24 CFR Part 968, respectively.

5. **Nondiscrimination certification.** The PHA (or PRE) must certify that neither it nor any other entity that may assume substantial responsibilities for implementing the program will discriminate in its administration of the plan, in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, and implementing regulations. This certification refers to Section D, Purchaser eligibility and selection.

6. **Legal opinion.** The plan must include an opinion from counsel indicating that it has reviewed the program and finds it consistent with all applicable requirements of federal, state, and local law, including regulations as well as statutes. At a minimum, legal counsel must certify that the homeownership plan documents fully incorporate the sale to a low-income family, the resale reverter, and the restriction of use of resale proceeds (see 24 CFR Part 906.41(f) and 24 CFR Part 906.27).

7. **Board resolution.** A copy of the PHA's Board of Commissioners resolution evidencing its approval of the program.

8. **Section 8(y).** If the PHA plans to provide families with assistance under the Section 8(y) homeownership option in connection with the Section 32 homeownership project, a certification that the PHA will comply with the requirements of the Section 8(y) statute and implementing regulations. The plan should document how the PHA expects to deal with situations where the eligibility for Section 8(y) may reach its maximum duration (for those households that are limited to 10 or 15 years of such assistance) before the end of the mortgage term.

9. **A narrative description of the deed or title restrictions** recording the principal residence requirement, the recapture provisions, and the gain from appreciation sharing if the home is resold within the first five years. See 24 CFR 906.69(n).

10. **Other information**. Any other information as may be reasonably required for HUD review of the program.

Those PHAs acquiring *non-public* housing for homeownership must submit the following (see 24 CFR Part 906.41):

The PHA must submit an acquisition proposal to the HUD Field Office for its approval before the Section 32 homeownership plan can be approved. The acquisition proposal must contain the following:

1. **Property description**. A description of the properties, including the number of housing units, unit types and number of bedrooms, and any non-dwelling facilities on the properties to be acquired.

2. **Certification**. If the housing units were constructed under a contract or an agreement that they be sold to the PHA, a certification by the developer/owner that the developer/owner complied with all Davis-Bacon wage rate requirements under 906.37 of this part, including all required contractual provisions and compliance measures, and by the PHA that it received all applicable HUD environmental approvals and all applicable HUD releases of funds before executing the contract or agreement, in accordance with 24 CFR 906.47(d).

3. **Site information**. A description of the proposed general location of the properties to be acquired, or where specific properties have been identified, street addresses of the properties.

4. **Property costs**. The detailed budget of costs for acquiring the properties, including relocation and closing costs, and an identification of the sources of funding.

5. **Appraisal**. An appraisal of the proposed properties by an independent, state-certified appraiser (when the sites have been identified).

6. **Property acquisition schedule**. A copy of the PHA acquisition schedule.

7. **Environmental information**. The environmental information required by 24 CFR 906.47(f) where HUD will perform the environmental review under 24 CFR part 50, or a statement identifying the responsible entity that will perform the review under 24 CFR part 58. This does not apply to a property where a contact

or agreement for sale to the PHA has already been executed and HUD has already given prior approval following environmental review under 24 CFR part 50. Where the PHA's homeownership program is submitted for approval to HUD and contemplates acquisition of properties not identified at the time of submission or approval, the procedures at 24 CFR 906.47(e) apply.

8. **Market analysis**. An analysis of the potential market of eligible purchasers and estimated values of the homeownership units. This market analysis is in addition to the program budget discussed in Appendix 3 and the feasibility analysis in Appendix 5.

9. **Additional HUD-requested information**. Any additional information that may be needed for HUD to determine whether it can approve the proposal.

10. **Cost limit**. The acquisition cost of each property is limited by the housing cost cap limit, as determined by

Those PHAs acquiring *public* housing for homeownership must package acquisition plans into standard development and modernization proposals submitted to the HUD Field office. Construction and substantial rehabilitation of public housing units is not covered under Section 32.

HUD Approval

PHAs should submit an original and two copies of their complete Section 32 homeownership plans to the SAC with a copy to their HUD Field Office. Applications filed through PIC do not have to be provided on paper as well. The HUD-approved plan and the accompanying supporting documentation will be incorporated into the Implementing Agreement. Subsequent to executing this Agreement, the PHA must receive additional HUD approval if it wants to modify any of the terms contained in the Agreement or in the HUD-approved plan. Such modification of the terms in the Agreement or in the HUD-approved plan such as adding or removing elements of the eligible purchaser qualification or changing the terms of subordinate financing is permitted. However, if the PHA wishes to change the number of units to be sold, it must submit a revised homeownership plan.