

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**24 CFR Parts 941 and 970**

[Docket No. FR-3919-I-01]

RIN 2577-AB54

**Office of the Assistant Secretary for  
Public and Indian Housing; Public/  
Private Partnerships for the Mixed-  
Finance Development of Public  
Housing Units**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule adds a new subpart F to the public housing development program at 24 CFR part 941, which authorizes a public housing authority to use a combination of private financing and public housing development funds to develop public housing units. HUD is issuing this interim rule as a result of its determination that public housing development funds may be provided to a PHA, even though the PHA will provide those funds to a non-PHA entity so that it can develop and own the resulting public housing units. This interim rule also sets forth the requirements that must be met by the owner entity before HUD will approve a proposal to use mixed-finance strategies under subpart F, and sets forth continuing requirements that apply throughout the development and operation of the public housing units by the owner entity. In addition, this interim rule clarifies that replacement public housing units for public housing units that have been demolished may be built on the original public housing site, or in the same neighborhood, if the number of such replacement units is significantly fewer than the number of units demolished.

**DATES:** *Effective date:* July 1, 1996, except for §§ 941.606 and 941.610, which contain information collection requirements, and are not effective until approved by the Office of Management and Budget. When approval is obtained, HUD will publish notice of the effective date. See the Paperwork Reduction Act Statement below under the heading, "V. OTHER MATTERS."

*Comments due date:* Comments must be submitted by July 1, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street,

S.W., Washington, D.C. 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable. A copy of any comment concerning the information collections contained in the interim rule also should be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for HUD, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Bill Flood, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone number (voice): (202) 708-1640, ext. 4185; (TTY): (202) 708-9300 or 1-800-877-8339. (Except for the "800" telephone number, these are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This interim rule adds a new subpart F to the public housing development program at 24 CFR part 941, which authorizes a PHA to use a combination of private financing and public housing development funds to develop public housing units. HUD is issuing this interim rule as a result of its determination that a PHA may receive public housing development funds under section 5 of the United States Housing Act of 1937, notwithstanding the fact that the PHA will provide those funds to a non-PHA entity to develop and own the resulting public housing units.

Under this subpart, a PHA and its partner(s) may structure transactions that make use of private and/or public sources of financing (including public housing development funds) for the purpose of developing public housing units. The resulting development(s) (referred to as a "mixed-finance" development(s) for purposes of this interim rule), may consist of 100 percent public housing units, or may consist of both public housing and non-public housing units. Through Fiscal Year 1997, transactions approved under this subpart will not involve more than \$94 million in mortgage financing insured by the Federal Housing Administration. Additionally, at the end of the 1997 fiscal year, HUD will undertake an analysis to determine the costs and benefits of the transactions approved under this subpart and will reconsider

the policy of using FHA mortgage insurance in connection with this development method.

Many potential scenarios for ownership and transaction structures exist, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or 100 percent ownership interest in the public housing units that are to be developed. PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third-party entity for the mixed-finance development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this interim rule as the PHA's partner. The entity that ultimately owns the public housing units, whether the PHA retains an ownership interest or not, is referred to as the "owner entity."

Subpart F also sets forth the requirements that must be met by the PHA before HUD can approve a proposal involving mixed-finance strategies, and sets forth continuing requirements that apply throughout the development and operation of the public housing units by the owner entity. HUD notes that, in developments where the proposed public housing units are not specifically designated units, the development requirements set forth in subpart F (including Davis-Bacon and procurement requirements) are applicable to all units that may, at any time, be used as the public housing units. Federal requirements applicable to the operation of public housing units must also be satisfied with respect to the percentage of public housing units approved by HUD for construction within the development.

HUD believes that the establishment of this new subpart will expand greatly opportunities for private sector investment in the development of public housing units. The Department believes further that the increased development of such public housing units will aid local efforts in providing affordable housing for low income families. HUD expects that the increased flexibility of using public housing funds for mixed-finance developments will expand considerably the opportunities for low income families to become more economically and socially integrated within the broader community. HUD specifically requests comments from the public on how the interim rule can provide for further expansion of such opportunities.

Furthermore, in HUD's continuing efforts to devolve responsibility and avoid micromanagement, it has

attempted to establish in this interim rule the minimal process necessary to ensure that public housing development funds are used for program purposes and not subject to waste, fraud or abuse. The Department specifically requests comments from the public as to how the process may be further streamlined, particularly in light of any existing safe harbors that may permit an abbreviated Departmental review. HUD will consider all comments that it receives in developing the final rule implementing subpart F.

## II. Implementation

The Department's primary consideration in approving proposals under this new subpart is to ensure the financial viability of the proposed mixed-finance development, since HUD wants to ensure that the public housing units remain available to eligible families for the maximum term of any low-income use restrictions. HUD also wants to ensure that the Federal investment of funds in the development is protected.

The mixed-finance strategies established in subpart F are independent of the normal requirements governing public housing development, as set forth in existing subparts A through E of part 941. To the extent that certain requirements contained in subparts A through E also apply to mixed-finance development, HUD has included in subpart F explicit cross-references to such requirements.

The Department intends to model procedures and requirements under subpart F as closely as possible to the Urban Development Action Grant (UDAG) program. Just as UDAG provided grant assistance to local governments for use with other sources of public and private funds (frequently for implementation through partnerships with other entities), so subpart F is intended to allow PHAs to combine their funds with other sources and enter into partnerships for the development and/or ownership of the funded property. Of course, the public housing funding sources that may be used in a mixed-finance development strategy operate under statutory provisions different from those of the UDAG program. The requirements applicable to the use of public housing development funds are set forth in this subpart.

The Department notes that currently it is in the process of overhauling the public housing development program set forth in 24 CFR subparts A through E, and expects to publish shortly an interim rule that will effect major changes to these subparts. HUD intends

to include in that interim rulemaking a republication of the contents of today's rulemaking. This will enable HUD to correct in subpart F any cross-references to provisions that may be revised and reorganized in subparts A through E of part 941.

A PHA may decide to pursue a mixed-finance development strategy under subpart F using either public housing development funds, or modernization funds reserved by HUD for the PHA prior to September 30, 1995 and approved by HUD for conversion to development uses. A PHA may also propose mixed-finance strategies to HUD under funding rounds for any appropriate programs in the future, which may be implemented after HUD establishes the necessary regulatory framework.

A PHA that wants to pursue a mixed-finance strategy is encouraged to identify as soon as possible the entity(ies) with which it would like to partner. The PHA must select its partner(s) pursuant to the requirements set forth in § 941.602(d), in such a manner that it can certify as to competitive selection pursuant to § 941.606(n)(1)(ii). Since the roles in development, ownership and management of the proposed public housing may substantially affect the type of partner the PHA seeks, PHAs are encouraged to thoroughly consider desired arrangements before soliciting partner(s).

The Department is authorizing the use of mixed-finance strategies under this subpart because it allows PHAs to incorporate other financing sources into the redevelopment of public housing communities. The PHA and its partner(s), as the primary entities responsible for developing the proposal, will be responsible for raising non-public housing capital for the mixed-finance development, as well as structuring a transaction and ownership structure that accommodates the requirements of the other financing sources.

For purposes of this interim rule, the term "participating party" refers to any public or private individual or organization that: (a) provides financial or other resources to carry out the proposal, or specified activities contained in the proposal; or (b) otherwise participates in the development and/or operation of the public housing units and will receive HUD funds with respect to such participation.

To be eligible to use mixed-finance strategies under this subpart, a PHA must prepare its proposal pursuant to § 941.606, and make a submission

directly to Headquarters. Following a technical screening of the proposal, HUD will carry out a substantive review of the proposal. This review includes a preliminary assessment of the financing and other documentation so that HUD can determine, to its own satisfaction, whether the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development. In addition, HUD will determine whether the proposal complies with all program requirements set forth in subpart F, and will undertake various statutory, regulatory and executive order reviews.

If Headquarters determines that the proposal can be approved, it will notify the PHA accordingly and send to the PHA for execution an ACC amendment and/or grant agreement. If the PHA has already executed a front-end ACC amendment, HUD will send to the PHA another ACC amendment for the mixed-finance development and/or a grant agreement. After the PHA executes these document(s), it must return them to HUD for execution.

Before public housing development funds may be disbursed to the PHA, it must first submit to HUD evidentiary materials and other forms of documentation, as described in §§ 941.610 and 941.612, and execute the ACC amendment or special mixed-finance amendment to the ACC (and/or grant agreement). Thereafter, the PHA is responsible for ensuring that the mixed-finance development is carried out in accordance with its approved proposal. Requirements governing HUD's monitoring and review of the development, and the sanctions that HUD may impose for non-performance, will be set forth in the special mixed-finance amendment to the ACC (and/or grant agreement).

## III. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR § 10.1.)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. This is

because 24 CFR part 941, subpart F authorizes a new and creative method of financing the development of public housing, which will enable localities to respond to critical shortages in their low income housing stock. The development of public housing units within a development will also promote the economic and social integration of low income families within the broader community, thereby providing greater opportunities for the upward mobility of such families. In addition, mixed-finance development will promote public/private development of public housing units, thereby facilitating the demolition of some of the nation's most severely distressed, obsolete high-rise public housing complexes. The Department invites public comment on the interim rule. The comments received within the 60-day comment period will be considered during development of a final rule that will supersede this interim rule.

#### IV. Description of Provisions

Following is a section-by-section analysis of each of the provisions included in this interim rulemaking:

##### *Section 941.202—("Site and Neighborhood Standards")*

This rulemaking adds a new paragraph (c)(3) to HUD's existing site and neighborhood standards at § 941.202. This provision is applicable only to mixed-finance proposals submitted under 24 CFR part 941, subpart F. The purpose of this provision is to clarify HUD's existing authority to approve the building of replacement public housing units for public housing units that have been demolished on either the original public housing site, or in the same neighborhood, if the number of such replacement public housing units is significantly fewer than the number of public housing units demolished. This authority was affirmed by the recent passage of section 1002(a)(9) of Pub.L. 104-19 (approved July 27, 1995) which explicitly authorizes HUD to approve the building of replacement public housing units under such circumstances.

The Department notes that, in construing the phrase, "significantly fewer units," it has chosen not to establish a quantitative standard. Instead, HUD will assess, on a case-by-case basis, the facts involved in each request. In addition, it will take into account the evolving interpretation of the phrase, "significantly fewer units" as it develops in the course of HUD's separate rulemaking on site and neighborhood standards.

##### *Section 941.600—("Purpose")*

This section indicates that the purpose of 24 CFR part 941, subpart F, is to authorize PHAs to use a combination of private financing and public housing development funds. In addition, this provision indicates that subpart F is intended to authorize a variety of ownership and transaction structures, in which the PHA or its partner(s) may hold no ownership interest, a partial ownership interest, or 100 percent ownership interest. In addition, this section sets forth continuing requirements that apply throughout the development and operation of the public housing units in the development.

Section 941.600(b) provides that public housing units built within a development using mixed-finance strategies must be comparable to non-public housing units with respect to size, location, external appearance, and distribution within the development.

##### *Section 941.602—("Applicability of Other Requirements")*

Paragraph (a) identifies the relationship between subpart F and the remaining subparts in 24 CFR part 941. Specifically, this paragraph states that the requirements contained in subpart F apply to the development and operation of public housing units in a development that is owned, or that will be owned, by a public/private partnership using mixed-finance strategies. If the PHA and/or owner entity does not want to designate specific units in a development as public housing units, the development of all units that may at any time be considered public housing units must be carried out in accordance with Federal requirements (including Davis-Bacon and procurement requirements, as set forth in this subpart).

This paragraph also provides that other requirements related to public housing development, as set forth in subparts A through E, do not apply to subpart F, except as may be required by HUD. Included in this paragraph is a listing of specific provisions contained in subparts A through E that are applicable to mixed-finance development under subpart F, which include: various definitions contained in § 941.103; PHA eligibility (§ 941.201); site and neighborhood standards (§ 941.202); design and construction standards (§ 941.203); cost guidelines (§ 941.204); PHA contracts (§ 941.205); eligible properties (§ 941.206); relocation and acquisition (§ 941.207); other Federal requirements (§ 941.208); audit (§ 941.209); maximum

development cost (§ 941.406); construction requirements (§ 941.503); acceptance of work and contract settlement (§ 941.504); and completion of development (§ 941.505). (See § 941.602(a) for limitations on applicability.)

Paragraph (b) provides that if HUD determines there is a conflict between a requirement contained in subpart F and a requirement contained in any other subpart of part 941, the requirements set forth in subpart F shall apply, unless HUD otherwise determines in writing.

Paragraph (c) of this section states that all references in subparts A through F of part 941 to the need for "HUD" or "field office" action or approval shall be construed to mean that "HUD Headquarters" shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this part. This is because HUD intends that its Headquarters office, located in Washington, DC, will be responsible primarily for taking necessary actions, and providing approvals with respect to proposals under subpart F.

Paragraph (d) provides that the administrative requirements under 24 CFR part 85, which are applicable to grants to PHAs and certain subgrantees, are also applicable to grantees and subgrantees that receive funds under subpart F. However, this paragraph also sets forth two provisos with respect to the applicability of part 85.

The first proviso states that a PHA may select a partner to implement its proposal using competitive proposal procedures for qualifications-based procurement. This method will enable the PHA to select a partner based on its qualifications, subject to negotiation of fair and reasonable compensation. Currently, this method (which does not require a consideration of price as a selection factor) is authorized in part 85 only with respect to a grantee's procurement of architectural/engineering professional services (see 24 CFR § 85.36(d)(3)(v)). HUD believes that a qualifications-based procurement of partners in mixed-finance undertakings is critical to the success of this new development method. This is because the success of a public/private partnership hinges upon the creativity, capacity, and vision of the partner and, in many instances, the scope or cost of the development may not be known at the time the owner entity seeks to procure the partner.

Consequently, HUD advocates providing maximum flexibility to the PHA to select a partner based upon its qualifications to develop a mixed-

finance development. In this manner, once selected, the partner will have the freedom to consider various approaches, sites, and financing strategies for the development of the public housing units, so long as the partner can provide the minimum number of units for which public housing funds were provided, and complies with any total development cost (TDC) and other statutory and mandatory requirements.

The second proviso relates to the applicability of part 85 to the owner entity that will develop and operate the public housing units. As a private entity, the owner entity would not normally be subject to the requirements of part 85. However, this provision states that the owner entity will be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. Even under such circumstances, however, HUD may exempt the owner entity from complying with part 85 if it finds that the owner entity has developed an acceptable alternative procurement plan.

#### *Section 941.604—("Definitions")*

This section of the interim rule defines terms that are applicable only to mixed-finance development: "development," "mixed-finance," "owner entity," "participating party," "partner," "proposal," "public housing agency," and "public housing unit." In addition to these terms, § 941.602(a)(1) identifies those definitions in subpart A that are also applicable to development carried out pursuant to subpart F. These definitions include: "Annual Contributions Contract," "cooperation agreement," "design documents," "reformulation," and "total development cost."

#### *Section 941.606—Proposal*

This section provides that the PHA must submit its proposal for the mixed-finance development by a deadline to be established by HUD. The Department has the discretion to determine the scope of a PHA's submissions under this section. HUD shall exercise its discretion based upon a consideration of whether the documentation is required for HUD to carry out statutory or other mandatory reviews, as well as a consideration of the PHA's past performance in implementing development projects under part 941, and the PHA's administrative capability, as demonstrated by its overall score on the PHMAP.

HUD has attempted to limit the scope of the PHA proposal submissions to those that it believes are necessary for the Department to comply with mandatory front-end reviews, such as environmental reviews, section 213 (24 CFR part 791, subpart C) clearance, subsidy layering, and life cycle analysis.

In addition, HUD is requesting a number of items that it believes are necessary for a preliminary assessment of the financial viability of the proposed mixed-finance development, and which would be required by any private sector lender prior to making available construction or permanent financing. These submissions include, but are not limited to: information with respect to the proposed activities to be carried out; a description of the relationship of the participating parties and of the proposed financing (including the proposed use of public housing development funds); a description of the proposed housing; site information; a market analysis; an estimate of the development construction cost; information with respect to facilities, displaced occupants, life cycle analysis, a determination of operating feasibility, and a copy of the section 213 solicitation letter; and various certifications and assurances.

#### *Section 941.608—Technical Processing and Approval*

After a PHA submits its proposal by the specified deadline, HUD will perform an initial screening to determine that all required documentation has been submitted. If there are any deficiencies in the proposal, HUD will advise the PHA and request that the additional information be submitted by a specified date.

Once the proposal is determined to be complete, HUD will evaluate the proposal to determine whether: (1) The PHA has the necessary legal authority to develop the public housing units pursuant to subpart F; (2) the proposed sources and uses of funds identified in the proposal are eligible and reasonable, and whether HUD's preliminary assessment of the financing and other documentation establishes to HUD's satisfaction that the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development; (3) if applicable, whether the public housing units in the proposed development will be comparable in size, location, external appearance and distribution within the development to the non-public housing units; (4) if applicable, if public housing development funds are to be used to pay for more than the pro rata cost of

common area improvements, whether the proposal complies with the specific requirements set forth in § 941.608(b)(4) (i) and (ii); (5) the proposal complies with all program requirements including, if applicable, any comments received from the unit of general local government under section 213 (24 CFR part 791, subpart C); and (6) the proposal is approvable after conducting an environmental review in accordance with 24 CFR part 50.

If HUD determines that the proposal can be approved, it will send a notification letter to the PHA indicating that its proposal has been approved and stating the approved total development cost of the public housing units in the development. HUD will also send to the PHA for execution an ACC amendment and/or grant agreement (or, if the PHA has previously executed a front-end ACC amendment, HUD will send to the PHA a special mixed-finance amendment to the ACC and/or a grant agreement). (The special amendment to the ACC (and/or grant agreement) contains additional requirements pertaining to the development and operation of the public housing units in the context of a mixed-finance development.) After the PHA executes these documents, it will return them to HUD for execution.

#### *Section 941.610—Evidentiary Materials and Other Documents*

Before HUD will allow a PHA to draw down development funds pursuant to its approved proposal, the PHA must submit to HUD, within the prescribed timeframe, certain evidentiary materials and other documentation with respect to the proposed development. This documentation includes, but is not limited to: various certifications and assurances to ensure that the public housing units will be developed and operated by the owner entity in accordance with the ACC and other applicable Federal requirements for the maximum period required by law; copies of executed development-related contracts; agreements that are needed to implement the approved proposal; deed restrictions, covenants running with the land, etc.

#### *Section 941.612—Disbursement of Grant Funds*

Paragraph (a) provides that a PHA may obtain front-end assistance under this subpart, and may use such funds to pay for: (1) The costs of materials and services related to the development of a proposal; (2) costs associated with the demolition of existing units on a proposed site; or (3) other preliminary development work.

HUD will determine the maximum amount of public housing funds that may be drawn down by a PHA to pay for preliminary development costs based upon its review of the nature and scope of activities proposed to be carried out by the PHA. The Department emphasizes that it will scrutinize carefully any proposed request by a PHA to use public housing funds in such a manner as to benefit the non-public housing units in a development. HUD will not permit public housing development funds to be used to subsidize non-public housing units, or parts of the development, that do not meet the specific requirements set forth in this subpart.

Paragraph (b) provides that HUD will review the evidentiary materials and other documents submitted pursuant to § 941.610 and, upon determining that such documents are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

First, a PHA may only draw down public housing development funds in an approved ratio to other public and private funds, in accordance with a schedule approved by HUD. The PHA and its partner must certify, in a form prescribed by HUD, prior to the initial drawdown of public housing development funds that the PHA will not draw down, and the partner will not request, more public housing grant funds than necessary to meet the PHA's pro rata share of the development costs. The PHA may draw down public housing development funds only when payment is due and after inspection and acceptance of work covered by the draw. The PHA is required to release funds promptly to its partner (or other designated third parties approved by HUD), normally within two working days of receipt of the funds from HUD. The PHA's partner is also required to take prompt action to distribute the funds (normally within two working days of receipt of the funds from the PHA).

Second, the interim rule provides that each drawdown of public housing development funds constitutes a certification by the PHA that all the representations and warranties of the PHA, as submitted under subpart F, continue to be valid, true, and in full force and effect. The PHA's draw down of funds constitutes a certification that it is in full compliance with all of the PHA's obligations under this subpart that are applicable at the time the funds are drawn down, and that the ratio for the draw down of funds is satisfied. Finally, the interim rule provides that the PHA's drawdown of funds constitutes a

certification that all conditions precedent to the PHA's authority to draw down the public housing grant funds have been satisfied, and that the funds to be drawn down will be used only for eligible costs actually incurred, or that will be incurred, in accordance with the provisions of this subpart and the approved proposal.

Paragraph (c) of this section clarifies that the standard drawdown requirements set forth in paragraph (b) (including the requirement that public housing development funds must be drawn down in an approved ratio to other public and private funds) do not apply to front-end assistance that is approved by HUD for drawdown under paragraph (a) of this section.

*Section 941.614—("HUD Monitoring and Review")*

This section establishes the regulatory authority for HUD's ongoing monitoring and review of a PHA's approved proposal, and provides that the special mixed-finance amendment to the ACC (and/or grant agreement) will set forth specific monitoring and review requirements under this subpart.

*Section 941.616—("Sanctions")*

This section establishes the regulatory authority for HUD's imposition of sanctions in the event the public housing units that are proposed to be developed under this subpart are not developed in accordance with the projected development schedule, the approved proposal, or all applicable Federal requirements, or if the units are not operated in accordance with applicable requirements. In addition, this section provides that HUD may impose sanctions on the PHA, and/or seek legal and equitable relief in accordance with requirements prescribed by HUD in the special mixed-finance amendment to the ACC and/or the grant agreement.

*Section 970.2—("Applicability")*

HUD is amending 24 CFR § 970.2 to carve out two additional exceptions to the applicability of 24 CFR part 970 (the Department's regulations implementing the demolition and disposition requirements of section 18 of the United States Housing Act of 1937 ("USHA")). These exceptions are intended to clarify that a PHA is not required under certain circumstances to comply with the disposition requirements set forth in section 18 of the USHA.

The first exception provides that a PHA is not required to comply with section 18 if the PHA conveys a project to the owner entity pursuant to an approved proposal under 24 CFR part

941, subpart F, before the determination of the Actual Development Cost to enable an owner entity to develop the project using the mixed-finance development method.

The second exception provides that the requirements of section 18 are inapplicable in the event of a reversion of the public housing units from the owner entity to the PHA (e.g., at the end of the low-income housing tax credit term).

However, section 18 *does* apply whenever the owner entity seeks to dispose of public housing units developed under subpart F to a non-PHA entity, or to demolish the units, or to operate the units in a manner inconsistent with public housing occupancy requirements. Section 18 also applies to any disposition by the PHA of public housing units once the Actual Development Cost of the units is determined. Thus, a PHA that wants to convey existing public housing units to an owner entity for rehabilitation would have to comply with requirements set forth in section 18.

V. Other Matters

*National Environmental Policy Act*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules Docket Clerk, 451 Seventh Street, S.W., room 10276, Washington, D.C. 20410-0500.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that the interim rule will not have a significant impact on a substantial number of small entities.

*Executive Order 12866*

This interim rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of HUD's Rules Docket Clerk, room 10276, 451 7th Street, S.W., Washington, D.C.

Pursuant to Executive Order 12866, each Federal agency must provide a cost/benefit analysis with respect to

each rule that is determined to be a significant regulatory action. Accordingly, HUD sets forth the following cost/benefit analysis for this interim rulemaking:

Mixed finance development is a new development method whereby existing public housing development funds can be used with other public and private funding sources. This interim rule will not result in any additional cost to the taxpayer, since it enables PHAs to combine their funding with private and other public sources, and to enter into partnerships with other entities for the development, ownership and/or management of public housing units. This financing mechanism will enable PHAs to locate public housing units in developments that may consist of public housing and non-public housing units.

This interim rule provides that public housing units located within a development must be comparable to the non-public housing units with respect to size, location, external appearance and distribution within the development. In developments consisting solely of public housing units, the additional capital made available through other sources is expected to provide higher quality living environments than would be possible if the PHA used only public housing development funds to construct the development.

Examples of this method of development under the HOPE VI Urban Revitalization Demonstration program are underway. Estimated private investment in these transactions range from one-half to twice the level of the public housing funds involved.

Additional benefits to the public include ending the isolation and stigmatization of public housing residents. Moreover, the interim rule

will enhance the ability of PHAs to collaborate substantially with other local institutions in the large-scale revitalization of neighborhoods containing public housing. Public housing created as part of mixed-finance transactions is subject to market forces, particularly when integrated with non-public housing units in a development.

Finally, the interim rule provides for flexibility in transaction structures as well as development, ownership and management strategies for PHAs to craft the most advantageous proposal for their particular communities.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the provisions of this interim rule will not have a significant impact on family formation, maintenance or well-being, except to the extent that the program authorized by the interim rule will provide increased opportunities for low-income families to live in public housing developments. The Department believes that these opportunities will increase the likelihood that low-income families will become more economically and racially integrated within the broader community, thereby providing positive benefits for families.

*Executive Order 12611, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and

responsibilities among the various levels of government.

*Catalog of Federal Domestic Assistance.*

The Catalog of Federal Domestic Assistance number for this program is 14.850.

*Paperwork Reduction Act Statement*

The information collection requirements contained in §§ 941.606 and 941.610 of this interim rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided herein. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 10276, Washington, D.C. 20410; and to the Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

Information on the estimated public reporting burden is provided, as follows:

ANNUAL REPORTING BURDEN FOR INFORMATION COLLECTION  
[FR-3919]

Section	Number of respondents	x	Frequency of responses	x	Hours per response	=	Burden hours
941.606 .....	35		1		48		1,680
941.610 .....	20		1		64		1,280
Total Reporting Burden .....							2,960

List of Subjects

*24 CFR Part 941*

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 970*

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

In accordance with the reasons set forth in the preamble, 24 CFR part 941 and part 970 are amended as follows:

**PART 941—PUBLIC HOUSING DEVELOPMENT**

1. The authority citation for 24 CFR part 941 continues to read as follows:

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

2. Section 941.202 is amended by adding a new paragraph (c)(3), to read as follows:

**§ 941.202 Site and neighborhood standards.**

\* \* \* \* \*

(c) \* \* \*

(3) Notwithstanding any other provision of this part, and for purposes only of subpart F of this part, replacement public housing units for public housing units demolished may be built on the original public housing site, or in the same neighborhood, if the number of such replacement public housing units is significantly fewer than the number of public housing units demolished.

\* \* \* \* \*

3. A new subpart F is added to read as follows:

**Subpart F—Public/Private Partnerships for the Mixed Finance Development of Public Housing Units**

Sec.

941.600	Purpose.
941.602	Applicability of other requirements.
941.604	Definitions.
941.606	Proposal.
941.608	Technical processing and approval.
941.610	Evidentiary materials and other documents.
941.612	Disbursement of grant funds.
941.614	HUD monitoring and review.
941.616	Sanctions.

**Subpart F—Public/Private Partnerships for the Mixed Finance Development of Public Housing Units**

**§ 941.600 Purpose.**

(a)(1) This subpart authorizes a PHA to use a combination of private financing and public housing development funds to develop public housing units, and is designed to enable PHAs and their partners to structure transactions that make use of private and/or public sources of financing. Many potential scenarios for ownership and transaction structures exist, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or 100 percent of the ownership interest of the public housing units that are to be developed. PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third-party entity for the mixed-finance development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this subpart as the PHA's "partner." The entity that ultimately owns the public housing units, whether or not the PHA

retains an ownership interest, is referred to as the "owner entity." The resulting "mixed-finance" developments may consist of 100 percent public housing units, or may consist of public housing and non-public housing units.

(2) This subpart sets forth the requirements that must be met by the PHA and its partner(s) before HUD can approve a proposal for mixed-finance development, and also sets forth continuing requirements that apply throughout the development and operation of the development by the owner entity.

(b) Under this subpart, public housing units that are built in a mixed-finance development must be comparable in size, location, external appearance, and distribution to the non-public housing units within the development.

**§ 941.602 Applicability of other requirements.**

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

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

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

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

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

(5) Section 941.204 ("Cost guidelines");

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

(7) Section 941.206 ("Eligible properties");

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

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

(10) Section 941.209 ("Audit");

(11) Section 941.406 ("Maximum development cost and advances") (except that paragraph (b) of that section, dealing with "development advances," is not applicable to this subpart);

(12) Section 941.503 ("Construction requirements");

(13) Section 941.504 ("Acceptance of work and contract settlement"); and

(14) Section 941.505 ("Completion of development").

(b) *Procedure in the event of a conflict between requirements.* In the event of a conflict between a requirement contained in this subpart and an applicable requirement set forth in subparts A through E of this part, the requirements of this subpart shall apply, unless HUD otherwise so determines in writing.

(c) *HUD approval.* For purposes of this subpart only, any action or approval that is required to be taken or provided by HUD or by the HUD field office, pursuant to a requirement set forth in subparts A through F of this part, shall be construed to mean that HUD Headquarters shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this subpart.

(d) *Applicability of requirements pursuant to 24 CFR part 85.* The requirements of 24 CFR part 85 are applicable to this subpart, subject to the following two provisos:

(1) A PHA may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including TDC and other applicable cost limitations);

(2) An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.



**§ 941.604 Definitions.**

In addition to the definitions set forth in § 941.602(a)(1), the following definitions are applicable to this subpart:

**Development.** A housing facility consisting of public housing units, and that may also consist of non-public housing units, that has been developed, or that will be developed, using mixed-finance strategies under this subpart.

**Mixed-finance.** The combined use of publicly and privately financed sources of funds for the development of public housing units under this subpart.

**Owner Entity.** The entity that will own the public housing units, if the PHA holds less than one hundred percent of the ownership interest; or the lessee under a ground lease from the PHA. The owner entity may be a partnership that includes the PHA.

**Participating party.** Any person, firm, corporation, or public or private entity that:

(1) Agrees to provide financial or other resources to carry out the approved proposal, or specified activities contained in the proposal; or

(2) Otherwise participates in the development and/or operation of the public housing units and will receive funds derived from HUD with respect to such participation. The term "participating party" includes an owner entity or partner.

**Partner.** A third party entity with whom the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart, and that has primary responsibility with the PHA for the development of the housing units under the terms of the approved proposal.

**Proposal.** For purposes of this subpart only, the term "proposal" means a detailed PHA submission of information under § 941.606.

**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 or operation of low-income housing under this part. For purposes of this subpart, the term "PHA" also encompasses any agency or instrumentality of the PHA.

**Public housing unit.** A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C. 1437g).

**§ 941.606 Proposal.**

Each proposal shall be prepared in the form prescribed by HUD and shall include some or all of the following

documentation, as deemed necessary by HUD. In determining the amount of information to be submitted by the PHA under this section, HUD shall consider whether the documentation is required for HUD to carry out mandatory statutory or executive order reviews, the quality of the PHA's past performance in implementing development projects under this part, and the PHA's demonstrated administrative capability, as demonstrated by its overall score on the PHMAP. The proposal includes:

(a) **Activities; relationship of participating parties.** An identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA, and the legal and business relationships between the PHA and each of the participating parties.

(b) **Financing.** A detailed description of all financing (including public housing development funds) necessary for the implementation of the proposal, specifying the sources (with respect to each of the proposed categorical uses of all such financing), together with a ten-year operating pro forma for the development (including all underlying assumptions). In addition, the PHA may be required to submit to HUD, for such review and approval as HUD deems necessary, all documents (including applications for financing) relating to the financing of the proposal, including, but not limited to, any loan agreements, notes, mortgages or deeds of trust, use restrictions, operating pro formas relating to the viability of the development, and other agreements or documents pertaining to the financing of the proposal.

(c) **Methodology.** If the PHA proposes to provide public housing operating subsidy for the public housing units, it must submit a methodology acceptable to HUD for the distribution of a portion of its operating subsidy to such units;

(d) **Development description.** A description of the housing, including the number and type (with bedroom count) of public housing units and, if applicable, the number and type of non-public housing units (with bedroom count) to be developed; schematic drawings and designs of the proposed building and unit plans; outline specifications; and the types and amounts of non-dwelling space to be provided.

(e) **Site information.** An identification and description of the proposed site, site plan, and neighborhood.

(f) **Market analysis.** An analysis of the projected market for the proposed development.

(g) **Development construction cost estimate.** A preliminary development

construction cost estimate based on the schematic drawings and outline specifications and current construction costs prevailing in the area. In addition, a copy of the PHA development schedule, including the architect or contractor estimate of the time required to complete each major development stage.

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

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

(j) **Operating feasibility.** A demonstration of the operating feasibility of the development, which shall be accomplished by the PHA's showing that the estimated operating expenses of the development will not exceed its estimated operating income.

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

(l) **Section 213 clearance.** To expedite processing of the proposal, a PHA may solicit, on behalf of HUD, comments under section 213 (24 CFR part 791, subpart C) from the chief executive officer (CEO) (or his or her designee) of the unit of general local government. In such case, the solicitation letter must state that comments should be sent directly to HUD within 30 calendar days of HUD's estimated date of receipt of the PHA's proposal. The local government's response must state that the comments are to be considered its only response under 24 CFR part 791, subpart C. A copy of the solicitation letter must be included in the PHA's proposal.

(m) **New construction.** If a proposal involves new construction, the PHA must comply with section 6(h) of the Act (42 U.S.C. 1437d). This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint testing and abatement). Alternatively, the PHA may submit a certification, accompanied by



supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition.

(n)(1) *Certifications and assurances.* The PHA shall submit, as part of its proposal, certifications and assurances warranting that it:

(i) Has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under this subpart. In addition, the PHA shall warrant that it has the legal authority necessary to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and that it has obtained all necessary approvals for this purpose;

(ii) Will use an open and competitive process to select the partner and/or the owner entity and shall ensure that there is no conflict of interest involved in the PHA's selection of the partner and/or owner entity to develop and operate the proposed public housing units. In addition, the PHA shall ensure that:

(A) Any selected partner and/or owner entity complies with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in the development, and uses a competitive process consistent with the requirements set forth in this subpart; and

(B) If the partner and/or owner entity (or any other entity with an identity of interests with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids;

(iii) Will be responsible to HUD for ensuring that the public housing units are developed and operated in accordance with all applicable public housing requirements, including the ACC, and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time. The PHA must also warrant that it will provide for a mechanism to assure, to HUD's satisfaction, that the public housing units will remain available for use by low-income families for the maximum period required by law. In addition, the PHA must warrant that any agreement providing for the management of the public housing units by an entity other than the PHA shall require that the units be operated in accordance with all applicable requirements under this subpart for the

full term of any low-income use restrictions.

(2) The PHA shall submit a certification of previous participation in accordance with procedures set forth in 24 CFR part 200, subpart H, and shall ensure that a similar certification is submitted to HUD by the participating parties.

**§ 941.608 Technical processing and approval.**

(a) *Initial screening.* HUD shall perform an initial screening to determine that all documentation required as part of the proposal under § 941.606 has been submitted. HUD will advise the PHA of any deficiencies in the proposal and indicate 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, HUD will evaluate the proposal to determine:

(1) Whether the PHA has the legal authority necessary to develop public housing units through the establishment of an owner entity and the use of mixed-finance strategies in accordance with this subpart;

(2) Whether the proposed sources and uses of funds set forth in the proposal are eligible and reasonable, and whether HUD's preliminary assessment of the financing and other documentation establishes to HUD's satisfaction that the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development. For this purpose, HUD will consider (among other factors) the PHA's proposed methodology for allocating operating subsidies on behalf of the public housing units; the projected revenues to be generated by any non-public housing units in a mixed-finance development; and the 10-year operating pro forma and other information contained in the proposal;

(3) If applicable, whether the public housing units in the proposed development will be comparable in size, location, external appearance and distribution within the development to the non-public housing units;

(4) If public housing development funds are to be used to pay for more than the pro rata cost of common area improvements, whether the proposal ensures that:

(i) On a per unit basis (taking into consideration the number of public housing units for which funds have been reserved) the PHA will not exceed TDC limits; and

(ii) Any common area improvements will benefit all residents of the development;

(5) Whether the proposal complies with all program requirements including, if applicable, any comments received from the unit of general local government pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) (see 24 CFR part 791, subpart C); and

(6) Whether the proposal is approvable following completion by HUD of an environmental review in accordance with the requirements of 24 CFR part 50.

(c) *Proposal approval.* HUD shall send a notification letter to the PHA stating that the proposal has been approved or disapproved. For approved proposals, the letter shall indicate the approved total development cost of the public housing units in the development. HUD will also send to the PHA for execution an ACC amendment and/or a grant agreement. If the PHA has already executed a front-end ACC amendment, HUD will send to the PHA for execution a special ACC amendment for the mixed-finance development (and/or a grant agreement). The PHA shall execute these documents and return them to HUD for execution.

**§ 941.610 Evidentiary materials and other documents.**

(a) *Submission of documents.* As a condition of the release of grant funds under § 941.612, the PHA shall submit to HUD, within the timeframe prescribed by HUD, evidentiary materials and other documentation, as more fully set forth in the special mixed-finance amendment to the ACC (and/or grant agreement). Such materials and documentation shall include, but shall not be limited to:

(1) A copy of executed development-related contracts entered into by the PHA or owner entity with respect to the development, and the PHA-executed ACC amendment or special mixed-finance amendment to the ACC (and/or grant agreement);

(2) Agreements that are necessary to implement the proposal and to ensure that all requirements of this subpart are satisfied. Such agreements must be submitted to HUD for review and approval and shall include, but shall not be limited to:

(i) A deed restriction, covenant running with the land, ground lease, or other arrangement of public record, that will assure to HUD's satisfaction that the public housing units will be available for use by eligible low-income families in accordance with all

applicable public housing requirements for the maximum period required by law;

(ii) A regulatory or operating agreement between the PHA and the owner entity that provides binding assurances that the operation of the public housing units will be in accordance with all applicable public housing requirements;

(iii) An agreement between the PHA and the owner entity with respect to the provision of operating subsidy by the PHA in accordance with this subpart;

(iv) A partnership agreement, development agreement, or other agreement entered into between the PHA and its partner, or any other participating party, that establishes the relationships between the parties with respect to the implementation of the proposal, including all rights and liabilities (financial and otherwise) of the parties, a development schedule, and the respective commitments of the parties with respect to the development of the public housing units. For developments involving public and non-public housing units only, the PHA shall also provide for an allocation with the owner entity of expenses and risks (e.g., fire, exhaustion of, or failure to receive, syndication funds, etc.) associated with the development and operation of the development. The allocation of expenses and risks shall be based upon a ratio that reflects the proposed bedroom mix of the public housing units as compared to the bedroom mix and unit count of the non-public housing units in the development, or as otherwise approved by HUD;

(v) Any agreement relating to the management of the public housing units by an entity other than the PHA;

(vi) For developments consisting of public housing and non-public housing units, and in lieu of the standard cooperation agreement required under § 941.201(c), the PHA shall submit a cooperation agreement with the applicable locality concerning PILOT payments, local tax exemption and local government services on behalf of the proposed public housing units. Such payments, exemption and services must be based upon a ratio reflecting the proposed bedroom mix of the public housing units as compared to the bedroom mix of the non-public housing units in the development, or as otherwise approved by HUD. For developments consisting only of public housing units, the PHA shall submit the standard cooperation agreement required under § 941.201(c);

(3) All private or public financing documents evidencing the availability

of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the irrevocability of those funds. HUD may require in lieu of, or in addition to the submission of these documents, an opinion of the PHA's and the owner entity's counsel (or other party designated by HUD) attesting that counsel has examined the availability of the participating party(ies)'s financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been irrevocably committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal;

(4) The organizational documents of the owner entity, which shall be reviewed by HUD (together with all financing documents) to ensure that they do not provide equity investors, creditors, and any other parties, with rights that would be inconsistent with, or that could interfere with, HUD's interest in the proposed development;

(5) Evidence that all necessary actions have been taken by the PHA and other participating parties to confer such legally enforceable rights as will enable HUD to protect its investment in the property and to ensure the availability of the public housing units for low-income persons for the maximum permissible period;

(6) Evidence of control of the site by the PHA, partner, or owner entity following proposal submission, for such period of time as may be required by HUD;

(7) 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 construction of the development;

(8) In addition, the PHA shall submit the following certifications warranting that:

(i) For PHAs receiving operating assistance, that:

(A) There shall be no disposition of the public housing units without the prior written approval of HUD during and for ten years after the end of the period in which the public housing units receiving operating subsidy from the PHA; and

(B) During a 40-year period (which may be extended for 10 years after the end of the period in which the public housing units receive operating subsidy from the PHA, or as may be otherwise required by law), the public housing units shall be maintained and operated

in accordance with all applicable public housing requirements (including the ACC), as those requirements may be amended from time to time;

(ii) The PHA will develop at least the same number of public housing units as were approved by HUD as part of the PHA's proposal. Where the PHA proposes to pay for more than its pro rata share of the cost of common area improvements, the PHA must also certify that:

(A) It will develop the same number of public housing units as were approved by HUD as part of the PHA's proposal, and will do so within the TDC limits; and

(B) The common area improvements will benefit all residents of the development. If the PHA's proposal provides that public housing units within a development will not be specifically designated as public housing units, but shall instead constitute a fixed percentage of the housing units and number of bedrooms developed under the proposal, the PHA must provide additional binding assurances that the percentage of public housing units and number of bedrooms, as approved by HUD, will be maintained as public housing by the owner entity, and that all of the requirements of this subpart will be satisfied with respect to those units;

(iii) It will ensure that the requirements of this subpart are binding upon the owner entity and any partner of the PHA and, to the extent determined necessary by HUD, upon any other participating party. In addition, in the event of any noncompliance with the requirements of this subpart by any participating party, the PHA agrees to take all necessary enforcement action to ensure such compliance or, alternatively, to pursue any legal or equitable remedies that HUD deems appropriate;

(iv) It will include in all agreements or contracts with the partner, owner entity, or any other participating parties receiving development funds under this subpart, an acknowledgement that a transfer of the development funds by the PHA to the partner, the owner entity, or other participating party, shall not be deemed to be an assignment of development grant funds and that, accordingly, the partner, the owner entity or other participating party shall not succeed to any rights to benefits of the PHA under the ACC, or ACC amendment, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC or ACC amendment;

(v) It will include, or cause to be included, in all its agreements or

contracts with the partner, the owner entity, or other participating parties, and in all contracts with any other party involving the use of development grant funds under this subpart, a provision stating that nothing in the ACC or ACC amendments providing such funds, nor any agreement or contract between the party(ies) shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD;

(vi) It will ensure that the development of the public housing units will be in compliance with labor standards applicable to the development of public housing including, but not limited to, wage rates under the Davis-Bacon Act (40 U.S.C. 276a *et seq.*). If the proposed development will include public housing units that are not specifically designated units, the PHA shall ensure that such labor requirements are met with respect to the development of all units that may, at any time, be used as the public housing units;

(vii) It will take all steps necessary to ensure that, in the event of a foreclosure or other adverse action brought against the owner entity with respect to the housing units (including, but not limited to, the public housing units), the operation of the public housing units developed under this subpart shall not be adversely affected.

(9) Such additional documentation as may be required by HUD.

(b) *Subsidy layering analysis.* After the PHA submits the documentation required under paragraph (a) of this section, HUD (or its designee) shall carry out a subsidy layering analysis pursuant to section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (see 24 CFR part 4) to determine whether the amount of assistance being provided for the development is more than necessary to make the assisted activity feasible after taking into account the other governmental assistance.

#### **§ 941.612 Disbursement of grant funds.**

(a) *Front-end drawdowns.* A PHA may request front-end assistance for both scattered or non-scattered site development in accordance with the following requirements:

(1) Front-end assistance may be used to pay for materials and services related to proposal development, and may also be used to pay for costs related to the demolition of existing units on a proposed site or for preliminary development work;

(2) HUD shall determine on a case-by-case basis the maximum amount that may be drawn down by a PHA to pay for preliminary development costs, based upon a consideration of the nature and scope of activities proposed to be carried out by the PHA;

(3) Before a request for front-end assistance may be approved, the PHA must provide HUD with such information and documentation as HUD deems appropriate from the list set forth at § 941.606. In determining the extent of the PHA's submissions under this paragraph (a), HUD shall ensure that it has adequate information or documentation to enable it to carry out any statutory, executive order, or other mandatory upfront reviews under this subpart. These reviews shall include, but shall not be limited to, environmental reviews (including NEPA and historic preservation), intergovernmental review, section 213 clearance (24 CFR part 791, subpart C), and subsidy layering. If, upon completing these reviews, HUD determines that the proposed development is approvable, it may execute with the PHA a front-end ACC amendment and the special mixed-finance amendment to the ACC (and/or grant agreement) to provide advances for the purposes, and in the amounts, approved by HUD.

(b) *Standard drawdown requirements.* HUD will review the evidentiary materials and other documents submitted pursuant to § 941.610, and, upon determining that such documents are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

(1) A PHA may only draw down public housing development funds in an approved ratio to other public and private funds, in accordance with a draw schedule prepared by the PHA and approved by HUD. The PHA and its partner shall certify, in a form prescribed by HUD, prior to the initial drawdown of public housing development funds that the PHA will not draw down and the partner will not request more public housing grant funds than necessary to meet the PHA's pro rata share of the development costs. The PHA shall draw down public housing development funds only when payment is due and *after* inspection and acceptance of work covered by the draw. The PHA shall release funds to its partner promptly, normally within two working days of receipt of the funds from HUD, and only in accordance with the ratio approved by HUD. The PHA's partner shall take prompt action to distribute the funds, normally within

two working days of receipt of the funds from the PHA;

(2) Each drawdown of public housing development funds constitutes a certification by the PHA that:

(i) All the representations and warranties of the PHA, as submitted in accordance with this subpart, continue to be valid, true, and in full force and effect;

(ii) The PHA is in full compliance with all of the PHA's obligations pursuant to this part which, by their terms, are applicable at the time of the drawdown of the public housing development funds, and that to the best of the PHA's knowledge, it is not in default under the ACC, as amended;

(iii) All conditions precedent to the PHA's authority to draw down the public housing grant funds have been satisfied;

(iv) The public housing grant funds to be drawn down will be used for eligible costs actually incurred or to be incurred in accordance with the provisions of this subpart and the approved proposal; and

(v) The ratio for the draw down of funds is satisfied.

(c) The standard drawdown requirements set forth in paragraph (b) of this section (including the requirement that public housing development funds must be drawn down in an approved ratio to other public and private funds) do not apply to front-end assistance approved by HUD pursuant to paragraph (a) of this section.

#### **§ 941.614 HUD monitoring and review.**

HUD shall monitor and review the implementation of the PHA's approved proposal in accordance with requirements prescribed by HUD in a special mixed-finance amendment to the ACC (and/or grant agreement).

#### **§ 941.616 Sanctions.**

In the event the public housing units that are proposed to be developed under this subpart are not developed in accordance with the projected development schedule, the approved proposal, and all applicable Federal requirements, or if the units are not operated in accordance with applicable requirements, HUD may impose sanctions on the PHA, and/or seek legal and equitable relief, in accordance with requirements prescribed by HUD in the special mixed-finance amendment to the ACC (and/or grant agreement).

**PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS**

5. Section 970.2 is amended by removing the word “and” at the end of paragraph (a)(9); by removing the period at the end of paragraph (a)(10); and by adding new paragraphs (a)(11) and (a)(12), to read as follows:

**§ 970.2 Applicability.**

(a) \* \* \*

(11) A public housing development that is conveyed by a PHA to an owner entity pursuant to an approved proposal under 24 CFR part 941, subpart F and prior to the determination of the Actual Development Cost to enable an owner entity to develop the project using the mixed-finance development method; and

(12) Public housing units that are developed pursuant to the mixed-

finance development method at 24 CFR part 941, subpart F, and that are reconveyed by the owner entity to the PHA.

\* \* \* \* \*

Dated: January 16, 1996.  
Kevin Emanuel Marchman,  
*Acting Assistant Secretary for Public and Indian Housing.*  
[FR Doc. 96-10445 Filed 5-1-96; 8:45 am]  
**BILLING CODE 4210-33-P**