

Subpart A—General

[↑ top](#)

§ 941.101 Purpose and scope.

[↑ top](#)

(a) *Purpose.* The U.S. Housing Act of 1937 (Act), 42 U.S.C. 1437, authorizes HUD to assist public housing agencies (PHAs) with the development and operation of low-income housing projects and financial assistance in the form of grants (42 U.S.C. 1437c, 1437g, and 1437l). The purpose of the program is to develop units which serve the needs of public housing residents over the long term and have the lowest possible life cycle costs, taking into account future operating and replacement costs, as well as original capital investments.

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

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

Approval No.	Sections
2577–0033	941.207, 941.301, 941.303, 941.304, 941.606, 941.610.
2577–0036	941.205, 941.404.
2577–0039	941.402.

[61 FR 38016, July 22, 1996, as amended at 64 FR 13511, Mar. 19, 1999]

Effective Date Note: At 61 FR 38016, July 22, 1996, §941.101 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.102 Development methods and funding.

[↑ top](#)

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

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

(2) *Turnkey.* The turnkey method involves the advertisement and selection of a turnkey developer by the PHA, based on the best housing package for a site or property owned or to be purchased by the developer. Following HUD approval of the PHA's full proposal, the developer prepares the design and construction documents. The PHA and the developer execute the contract of sale to implement the PHA's full proposal. The developer is responsible for providing a completed housing project, which includes obtaining construction financing. Upon completion of project construction or rehabilitation in accordance with the contract of sale, the PHA purchases the development from the developer. This method may be used for either new construction or rehabilitation.

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

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

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

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

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

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

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

(c) *Limit on number of units* —(1) *General*. A PHA may not develop public housing pursuant to this part beyond the lesser of the number of units that the PHA had under ACC on August 21, 1996, or the number of units for which it was receiving operating subsidy on that date, unless authorized by HUD. HUD may condition such authorization on the PHA's agreement that such incremental units, once developed, will be ineligible for capital and/or operating subsidies from HUD.

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

[61 FR 38016, July 22, 1996, as amended at 67 FR 76101, Dec. 10, 2002]

§ 941.103 Definitions.

[↑ top](#)

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

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

Additional Project Costs (APC) means the sum of the following HUD-approved costs related to the development of a public housing project, which costs are not subject to the Total Development Cost limit but are included in the maximum project cost, as described in §941.306:

(1) Demolition of, or remediation of environmental hazards associated with, public housing units that will not be replaced on the site; and

(2) Extraordinary site costs that have been verified by an independent registered engineer (e.g., removal of underground utility systems, and replacement of off-site underground utility systems, extensive rock and/or soil removal and replacement, and amelioration of unusual site conditions such as unusual slopes, terraces, water catchments, lakes, etc.)

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

Community Renewal Cost (CRC) means the sum of the following HUD-approved costs related to the development of a public housing project: planning (including proposal preparation), administration, site acquisition, relocation, demolition of, and site remediation of environmental hazards associated with, public housing units that will be replaced on the project site, interest and carrying charges, off-site facilities, community buildings and non-dwelling facilities, contingency allowance, insurance premiums, any initial operating deficit, on-site streets, on-site utilities, and other costs necessary to develop the project that are not covered under APC or Housing Construction Cost.

Construction Contract. A contract between the PHA and a contractor to build or rehabilitate a project using the conventional development method.

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

Contract of sale. A contract between the PHA and a developer whereby the PHA agrees to purchase a completed project after construction or rehabilitation by a developer using the turnkey development method.

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

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

Housing Construction Cost (HCC) means the sum of the following HUD-approved costs related to the development of a public housing project: dwelling unit hard costs (including construction and equipment); builder's overhead and profit; the cost of extending utilities from the street to the public housing project; finish landscaping; and the payment of Davis-Bacon wage rates.

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

Public housing capital assistance means assistance provided by HUD under the Act or the HOPE VI program in connection with the development of public housing under this part, including: Capital Fund assistance provided under section 9(d) of the Act, public housing development assistance provided under section 5 of the Act, Operating Fund assistance used for capital purposes under section 9(g)(1) or (g)(2) of the Act, and HOPE VI grant assistance.

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

Total Development Cost (TDC) limit. The maximum amount of public housing capital assistance that can be used to pay for Housing Construction Costs and Community Renewal Costs in connection with the development of a public housing project, as determined under §941.306(b)(2). The TDC limit does not apply to Additional Project Costs.

[45 FR 60838, Sept. 12, 1980, as amended at 56 FR 13282, Apr. 1, 1991; 58 FR 62524, Nov. 29, 1993; 61 FR 5214, Feb. 9, 1996; 61 FR 38017, July 22, 1996; 62 FR 27125, May 16, 1997; 67 FR 76101, Dec. 10, 2002]

Subpart B—PHA Eligibility and Program Requirements

[↑ top](#)

§ 941.201 PHA eligibility.

[↑ top](#)

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

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

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

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

[45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, as amended at 61 FR 38017, July 22, 1996]

§ 941.202 Site and neighborhood standards.

[↑ top](#)

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

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

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

(c)(1) The site for new construction projects must not be located in:

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

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

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

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

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

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

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

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

(f) The site must comply with any applicable conditions in the local plan approved by HUD.

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

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

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

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

[45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, as amended at 61 FR 38017, July 22, 1996]

§ 941.203 Design and construction standards.

[↑ top](#)

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

(b) Projects must comply with:

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

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

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

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

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

[61 FR 38017, July 22, 1996]

§ 941.205 PHA contracts.

[↑ top](#)

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

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

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

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

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

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

(d) Each PHA shall certify before executing any contract with a contractor that the contractor is not suspended, debarred, or otherwise ineligible under 2 CFR part 2424. Each PHA also shall ensure that all subgrantees, contractors, and subcontractors select only contractors who are not listed as suspended, debarred, or otherwise ineligible under 2 CFR part 2424.

[61 FR 38018, July 22, 1996, as amended at 72 FR 73496, Dec. 27, 2007]

Effective Date Note: At 61 FR 38018, July 22, 1996, §941.205 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.207 Displacement, relocation, and acquisition.

[↑ top](#)

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the PHA shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Only residential tenants who are eligible under 24 CFR 913.103 and who meet the PHA standards for tenancy established pursuant to 24 CFR 960.204 will be permitted to continue in occupancy. Any residential tenant who (though not required to move permanently) must relocate temporarily (e.g., to permit rehabilitation or major reconstruction) shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (h) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements in 49 CFR part 24, subpart B. With respect to the Turnkey method of development (see 24 CFR 941.102(b)), 49 CFR 24.101(a) (1) and (2) apply to the PHA/developer and developer/owner transactions, respectively.

(e) *Notices.* (1) As soon as possible after the date described in paragraph (h)(1)(i) of this section, the PHA shall issue a general information notice (described in 49 CFR 24.203(a)) to each occupant of the property.

(2) At the time of the initiation of negotiations (defined in paragraph (i) of this section), the PHA shall issue an appropriate written notice to each person occupying the property. Those to be displaced shall be issued a notice of eligibility for relocation assistance. (This notice may be combined with the 90-day notice under 49 CFR 24.203(c).) Tenants (eligible under 24 CFR 913.103 and the standards for tenancy established in accordance with 24 CFR 960.204) who will not be displaced shall be issued a notice offering the tenant the opportunity to enter into a lease to continue in occupancy of the property under reasonable terms and conditions. (Also, see paragraph (h)(1)(iii) of this section.)

(f) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a “displaced person,” or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply. The certification in the PHA's “Resolution in Support of Public Housing Project” that the PHA will comply with all the requirements of 24 CFR part 941 shall constitute the PHA's certification of compliance with the URA, the implementing regulations at 49 CFR part 24, and this section.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid from funds available from other sources.

(3) The PHA must maintain records in sufficient detail to demonstrate compliance with this section, including data indicating the race, ethnic, gender and disability status of displaced persons.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the PHA or property owner that requires such move, if the move occurs on or after:

(A) For conventional or acquisition projects, the date of approval by HUD of the PHA proposal incorporating the site, or for scattered sites, the date HUD approves the applicable site;

(B) For turnkey projects, the date the PHA proposal is submitted to HUD; or

(C) For major reconstruction of obsolete public housing projects, the date the PHA issues the invitation for bids for the project;

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that the PHA or HUD determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the "initiation of negotiations," (defined in paragraph (i) of this section), if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with 24 CFR 913.107; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA

determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (h)(1)(i) of this section, but before commencing occupancy, received written notice of the project, its possible impact on the person (e.g., that the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

(i) *Definition of initiation of negotiations.* For purposes of this section, the term "initiation of negotiations" means:

(1) For conventional or acquisition projects:

(i) Where the PHA purchases the real property through an arm's-length transaction (as described in 49 CFR 24.101(a)(1)), the seller's acceptance of the PHA's written offer to purchase the property (i.e., the seller's execution of form HUD-51971-II), provided the PHA later purchases the property; or such other date, as may be determined by the PHA with the approval of the HUD Field Office; or

(ii) Where the PHA's purchase of the real property does not qualify as an arm's-length transaction under 49 CFR 24.101(a)(1), the delivery of the initial written purchase offer from the PHA to the Owner of the property (i.e., the PHA executed form HUD-51971-II). However, if the PHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the "initiation of negotiations" is the actual move of the person from the property;

(2) For turnkey projects, HUD Field Office approval of the PHA's proposal incorporating the developer's proposal, provided the contract of sale is later executed; or

(3) For major reconstruction of obsolete projects, the PHA's issuance of the invitation for bids for the project.

[59 FR 29344, June 6, 1994]

§ 941.208 Other Federal requirements.

[↑ top](#)

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

(b) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to the program.

[61 FR 38018, July 22, 1996, as amended at 64 FR 50228, Sept. 15, 1999]

§ 941.209 Audit.

[↑ top](#)

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

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

Subpart C—Application and Proposal

[↑ top](#)

Source: 61 FR 38018, July 22, 1996, unless otherwise noted.

§ 941.301 Application.

[↑ top](#)

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

Effective Date Note: At 61 FR 38018, July 22, 1996, §941.301 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.302 Annual contributions contract; drawdowns and advances.

[↑ top](#)

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

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

(c) HUD may approve the following in writing:

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

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

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

§ 941.303 Site acquisition proposal.

[↑ top](#)

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

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

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

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

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

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

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

Effective Date Note: At 61 FR 38018, July 22, 1996, §941.303 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.304 Full proposal content.

[↑ top](#)

Each full proposal shall include at a minimum the following:

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

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

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

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

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

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

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

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

(h) *Facilities*. A statement addressing the adequacy of existing facilities and services for the prospective occupants of the project, a description of public improvements needed to ensure the viability of the proposed project with a description of the sources of funds available to carry out such improvements, and, if applicable, a statement addressing the minority enrollment and capacity of the school system to absorb the number of school-aged children expected to reside in the project;

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

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

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

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

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

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

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

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

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

Effective Date Note: At 61 FR 38018, July 22, 1996, §941.304 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.305 Technical processing and approval.

[↑ top](#)

(a) *Standards*. HUD shall review the full proposal, submitted in accordance with §941.304, and the site acquisition proposal, submitted in accordance with §941.303, to determine whether each proposal complies with all statutory, executive order, and regulatory requirements applicable to public housing development including, if applicable, the comments received as a result of Intergovernmental Review. In addition, HUD shall carry out any necessary statutory and executive order reviews with respect to the proposal under review. If HUD determines that the proposal under review is acceptable, it shall notify the PHA in writing and shall forward to it for execution an ACC (or ACC amendment). If the PHA already has executed an ACC (or ACC amendment) for the entire reserved amount, HUD shall notify the PHA that it is authorized to draw down funds in accordance with §941.302.

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

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

§ 941.306 Maximum project cost.

[↑ top](#)

(a) *Calculation of maximum project cost.* The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes: (1) project costs that are subject to the TDC limit (*i.e.*, Housing Construction Costs and Community Renewal Costs); and (2) project costs that are not subject to the TDC limit (*i.e.*, Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the ACC. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC.

(b) *TDC limit.* (1) Public housing capital assistance may not be used to pay for Housing Construction Costs and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in Fiscal Year 1996 and prior years. No exceptions to HCC limits will be granted within the TDC limit.

(2) *Determination of TDC limit.* HUD will determine the TDC for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline.* HUD will first determine the applicable “construction cost guideline” averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of “average” quality and the Marshal & Swift cost index for construction of “good” quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the Federal Register.

(ii) *Step 2: Bedroom size and structure types.* The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and non-elevator type structures.* HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for non-elevator type structures.

(iv) *Step 4: TDC limit.* The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

(3) *Costs not subject to the TDC limit.* Additional Project Costs are not subject to the TDC limit described in paragraph (b)(2) of this section.

(4) *Funds not subject to the TDC limit.* A PHA may use funding sources not subject to the TDC limit (*e.g.*, CDBG funds, HOME funds, low-income tax credits, private donations, private financing, etc.) to cover project costs that exceed the TDC limit or the Housing Construction Cost limit described in paragraph (c) of this section. Such funds, however, may not be used for items that would result in substantially increased operating, maintenance or replacement costs, and must meet the requirements of section 102 of the HUD Reform Act (42 U.S.C. 3545). These funds must be included in the project development cost budget and legally acceptable written commitments for such funds must be provided by the PHA for HUD approval.

(c) *Housing Construction Costs* —(1) *General.* A PHA may not use public housing capital assistance to pay for Housing Construction Costs in excess of the amount determined under paragraph (c)(2) of this section.

(2) *Determination of Housing Construction Cost limit.* HUD will determine the Housing Construction Cost limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of “average” quality and the Marshal & Swift cost index for construction of “good” quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the Federal Register. The resulting construction cost guideline is then multiplied by the number of public housing units in the project based upon bedroom size and structure type. The Housing Construction Cost limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

(3) The Housing Construction Cost limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The Total Development Cost limit is applicable to such acquisition.

(d) *Community Renewal Costs.* Public housing capital assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the Housing Construction Costs paid for with public housing capital assistance and the TDC limit.

(e) *Rehabilitation of existing public housing projects.* The HCC limit is not applicable and the TDC limit for modernization of existing public housing is 90% of the TDC limit as determined under §941.306(b)(2). This limitation does not apply to the rehabilitation of any property acquired pursuant to §941.102.

[67 FR 76102, Dec. 10, 2002]

Subpart D—Project Development

[↑ top](#)

Source: 61 FR 38020, July 22, 1996, unless otherwise noted.

§ 941.401 Site and property acquisition.

[↑ top](#)

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

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

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

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

§ 941.402 Project design and construction.

[↑ top](#)

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

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

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

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

§ 941.403 Acceptance of work and contract settlement.

[↑ top](#)

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

(b) *Acceptance* —(1) *General*. A PHA may carry out the final inspection of the work and may accept the completed work. If, upon inspection, the PHA determines that the work is complete and satisfactory, except for work that is appropriate for delayed completion, the work shall be accepted by the PHA. The PHA shall certify to HUD before it pays the contractor or developer that it has inspected the work and determined that it is acceptable and in compliance with the construction contract or contract of sale and HUD requirements. The PHA shall determine any hold-back for items of delayed completion, and the amount due and payable for the work that has been accepted including any conditions precedent to payment that are stated in the construction contract or contract of sale. The contractor or developer shall be paid for items of delayed construction only after inspection and acceptance of this work by the PHA.

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

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

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

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

PHA shall record promptly the deed and declaration of trust in the form prescribed by HUD, and HUD may require submission of evidence of such recordation.

§ 941.404 Completion of development.

[↑ top](#)

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

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

Effective Date Note: At 61 FR 38021, July 22, 1996, §941.404 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart E—Performance Review

[↑ top](#)

§ 941.501 HUD review of PHA performance; sanctions.

[↑ top](#)

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

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

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

(ii) HUD shall review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, and other applicable laws and regulations.

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

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

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

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

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

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

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

(2) The PHA does not have a continuing capacity to carry out its proposal in a timely manner or in accordance with its proposal or HUD requirements, as determined in paragraph (a)(2) of this section;

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

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

(1) Submit additional information:

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

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

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

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

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

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

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

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

(iii) Development budgets, including modifications;

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

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

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

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

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

(1) Terminate future draw downs and/or advances to the PHA. In such case, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose;

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

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

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

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

[61 FR 38021, July 22, 1996]

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

[↑ top](#)

Source: 61 FR 19714, May 2, 1996, unless otherwise noted.

§ 941.600 Purpose.

[↑ top](#)

(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.

[↑ top](#)

(a) *Relationship of this subpart to other requirements in 24 CFR part 941.* The requirements contained in this subpart apply only to the development of public housing units using mixed-finance development methods under this subpart and to the operation of public housing units that are owned, or that will be owned, by an owner entity under this subpart. Other requirements for the development of public housing, as set forth in subparts A through E of this part, shall not apply to the development of public housing units pursuant to this subpart, except as may be required by HUD. Applicable requirements include, but shall not be limited to, the following:

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

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

(3) Section 941.202 (“Site and neighborhood standards”);

(4) Section 941.203 (“Design and construction standards”);

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

(6) Section 941.207 (“Relocation and acquisition”);

(7) Section 941.208 (“Other Federal requirements”);

(8) Section 941.209 (“Audit”);

(9) Section 941.306 (“Maximum development cost”);

(10) Section 941.402 (“Project design and construction”);

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

(12) Section 941.404 (“Completion of development”); and

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

(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.

[61 FR 19714, May 2, 1996, as amended at 61 FR 38022, July 22, 1996]

§ 941.604 Definitions.

[↑ top](#)

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.

[↑ top](#)

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 activities).

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.

[61 FR 19714, May 2, 1996, as amended at 64 FR 50228, Sept. 15, 1999]

Effective Date Note: At 61 FR 19715, May 2, 1996, §941.606 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.608 Technical processing and approval.

[↑ top](#)

(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.

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(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.

Effective Date Note: At 61 FR 19716, May 2, 1996, §941.610 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.612 Disbursement of grant funds.

[↑ top](#)

(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.

[↑ top](#)

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.

[↑ top](#)

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).