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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY

11/19/76

TO : Jack Marsh

FROM: Carla A. Hills

A handwritten signature in black ink, appearing to read "CAH", written over the "FROM:" line.

Enclosed are the transition materials which we intend to deliver to our counterpart Transition Officer of the incoming Administration as soon as he/she is designated.

Attachments





THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

November 19, 1976

MEMORANDUM FOR: Carter Transition Team

FROM : Carla A. Hills

Attached are a number of papers which provide an introduction to the Department of Housing and Urban Development and to a number of the major issues which the Carter Administration either must face or may choose to take on during its first few months in office.

Attachment 1 is a collection of very brief papers on important Departmental issues which must be or might be addressed in the first few months of the new Administration:

A) how the Secretary of Housing and Urban Development will fulfill his/her statutory authority to "exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development";

B) what recommendations to make to Congress regarding modifications in the Community Development Block Grant Program, or in the formula by which funds are dispersed under that program, and whether to propose to Congress a countercyclical add-on to the program;

C) whether to seek an FY 1977 Supplemental Appropriation for the Section 8 rental assistance and/or traditional public housing program and, if so, whether to seek authority to earmark any or all of these funds for special uses, such as use by State Housing Finance Agencies;

D) whether to seek an FY 1977 Supplemental Appropriation in order to implement the Congressional authorization in the Energy Conservation Production Act to conduct a demonstration (up to \$200 million) for low-interest loans to homeowners to make energy-saving home improvements;

E) what additional steps, if any, to take to stem the increase in assignment to HUD of mortgages on multifamily housing projects;

F) whether to submit to Congress for hearings this spring a Housing Assistance Block Grant;

G) what standards to promulgate in final regulations for the selection of sites on which to locate subsidized housing projects;

H) what the final design of the public housing program revived by the 1977 Appropriation Act should be; and

I) what organizational changes, if any, should be made in the short run in HUD or involving HUD and other agencies.

Attachment 2 is a brief chronology of major budget and legislative activities for calendar year 1977. This listing emphasizes the key milestones of annual authorization, appropriation, budget and Departmental planning processes.

Attachment 3 describes the process by which the Department is preparing extensive briefing books, which should also be useful as reference books, for the new Administration.

Attachment 4 is a published summary of the 1977 HUD Budget as submitted by President Ford to the Congress. The Budget summary contains brief descriptions and histories of HUD programs and funding levels, which may be of use to some members of the Transition Team depending upon their degree of familiarity with HUD programs. A cover memorandum sets forth briefly the Congressional action on the FY 1977 Budget, indicating the funds actually appropriated by Congress.

Attachment 5 is a copy of the Major Secretarial Objectives of the Department's FY 1977 Operating Plan, which sets forth the Department's current goals for the fiscal year, and two cover memorandums summarizing our performance in the fiscal year just ended and outlining problem areas of the FY 1977 Plan.



Attachment 1 (Issue A)
Interagency Coordination & Policy Development

The HUD Secretary has the statutory authority to "...exercise leadership at the direction of the President in coordinating Federal activities affecting housing and urban development." 42 U.S.C. §3533(b).

A useful model in the use of this authority is the President's Committee on Urban Development and Neighborhood Revitalization. In June, the President appointed Secretary Hills chairman of this Committee which included 8 Cabinet members, 4 agency heads, 2 White House staff members, and, by invitation, the chairmen of 2 independent regulatory agencies. On October 21, the Committee presented an interim report to the President.

The interim report articulated the following set of principles to guide Federal urban policy:

- The preservation of the Nation's housing stock, the restoration of the vitality of its urban neighborhoods, and the promotion of healthy economic development for its central cities must become a national priority, to be met by a creative partnership between the public and private sectors.
- Federal resources must be targeted to the areas of greatest need, recognizing the disproportionate social and economic burdens borne by individual communities or classes of citizens.
- The delivery of Federal assistance to urban areas must be made more efficient. The Committee recommends expansion of the use of block grants in providing Federal assistance to urban areas, because block grants are more efficient, more responsive to local needs, and ultimately more democratic methods of aiding the cities than the massive categorical programs of the 1950's and 1960's.
- In moving towards block grants, electoral responsibility for the use of Federal funds must be established, citizen participation and a role for neighborhood groups must be assured, the rights of minorities must be protected, and the capacity of local and state governments to administer their block grants should be improved. Finally, block grants should be structured to facilitate their creative combination at the local level with other sources of public and private funds.



On the basis of successful experiences with recent Federal block grant programs, the report recommended the consolidation of other existing categorical programs into block grants in several broad areas of Federal assistance, including:

- housing subsidies
- urban surface transportation;
- health services;
- and education.

The Department has developed a housing assistance block grant proposal which is discussed in issue paper (F). DOT and HEW, also have developed their block grant proposals at least in broad outline form.

The Committee's other recommendations included:

- A comprehensive review of present Federal aid formulas to determine their impact on "declining" cities and the states in which they are located. The Department's implementation of this recommendation in proposed changes to the community development block grant allocation formula is discussed in issue paper (B).
- A review of Federal tax policies with a view to providing greater incentives for the preservation and rehabilitation of urban homes and buildings and for business investment in urban areas with high unemployment.
- An aggressive search for new means of increasing private sector employment opportunities for inner-city youths. Several specific programs were suggested including the provision of relocation assistance as an adjunct to job training.
- A stand-by program of countercyclical block grant assistance to areas with high unemployment. A proposal for a program of countercyclical block grant assistance as a supplement to the community development program is discussed in issue paper (B).
- Legislation to allow nonjudicial foreclosure of Federally insured properties to reduce the incidence of boarded-up housing. This legislation has already been prepared by HUD and the Department of Justice.
- Vigorous enforcement of the Home Mortgage Disclosure Act of 1975 and the Equal Credit Opportunity Act

amendments of 1976, with a view to eliminating "redlining. HUD's Office of Policy Development is undertaking a program to identify and disseminate innovative local uses of mortgage disclosure data and, in the process, to assess statutory and administrative impediments to its successful use particularly by local governments. This study will be completed by early summer.

- Expansion of the Urban Homesteading program. The program was recently expanded from \$5 to 11.25 million in homestead properties. Suggestions for further expansion include an annual program level of \$15 million, provision of technical assistance to participating local governments, inclusion of VA properties, applications to small multi-family projects or city acquired dwellings.

The new Administration should determine quickly whether it intends to continue or suspend on-going work in this and other agencies to develop proposals implementing these recommendations.

The Committee agreed to an ambitious future agenda which includes study of the public and private roles in:

- Improving the commercial and industrial bases of our cities, particularly in the Northeast and North Central regions;
- The complex inter-relationship between the center cities and the larger metropolitan areas in which they are located;
- Reversing neighborhood decline, with a particular emphasis on the role of neighborhood organizations in preservation strategies;
- Improving the linkages between Federal assistance programs which provide funds to different recipients for similar purposes; and
- Meeting the needs of fast-growing cities to anticipate the plan for future growth patterns and public service needs.

HUD's Office of Policy Development has begun developing a work-plan for implementing this study agenda, but that activity has been suspended pending the transition. The new Administration should determine whether that work-plan should be continued and, if so, whether in HUD or on an inter-agency basis.

Finally, the Committee recommended a close working relationship between an Executive branch Urban Development and Neighborhood Preservation committee and the proposed National Commission on Neighborhoods, the creation of which the President's Committee supported. The new Administration must decide whether to carry this work forward by continuing a cabinet level committee on the cities and/or by supporting legislation introduced in Congress last year to establish a two-year National Commission on Neighborhoods.



Attachment 1 (Issue B)
Modifications in the Community
Development Block Grant Legislation

Fund Allocation Issues

Background

Title I of the Housing and Community Development Act requires that the Department conduct a study of the Community Development Block Grant funding mechanism and report its findings and recommendations by March 31, 1977. The Department will deliver this report by December 31, 1976, as part of the FY 78 Budget process. Preliminary findings from the Department's fund allocation study indicate that the categorical funding approach was not highly correlated with either the needs or the capacities of recipients. While the present formula is substantially better, it, too, is unresponsive to non-poverty related dimensions of need, such as the high cost of maintaining an aging physical infrastructure. Primarily because poverty data is used in the formula, the current funding mechanism seems to favor the South over the Northeast and Northcentral regions and outlying areas over central cities.

Hold-Harmless Phase-Out

Another formula issue is presented by the need to bring communities being "held harmless" (receiving funding based on their level of participation in the superseded categorical programs) down to their formula share amounts. A phase-out of hold harmless is to begin in FY 1978 and to be completed by 1980. Depending on funding levels this phase down will mean that about 187 "hold harmless" cities will receive less than they had received under the prior categorical programs by 1980. In addition, over 700 other, smaller cities which have been "held harmless" at their prior program levels will be phased-down to a zero entitlement and only be eligible for discretionary grants. Extension of "hold harmless" coverage is difficult to justify, however, in the face of study findings that the prior funding upon which it was based, is both arbitrary and inequitable.

Formula Changes

Substituting "age of housing stock" (units built in 1939 or earlier) for overcrowded housing as a formula factor substantially improves the CD formula by: (1) making the formula distribution more responsive to needs; (2) helping diminish the "hold harmless" problem by giving more formula

funds to many cities who received a larger share of funds under prior programs; and (3) swinging more funds to the older, declining cities, which are generally viewed as suffering fiscal hardships.

Including age of housing in the formula results in a small reduction in discretionary funds available for the non-entitled cities and creates a new losing class of cities. Assuming a consistent level of funding, 92 of the 335 cities receiving more block grant funds than they received under the prior categoricals would receive less funds under the new formula in FY 1978 than they will receive under the current formula in FY 77. This result remains even with a sizeable increase in appropriations.

Countercyclical Component

One option under consideration by HUD is a supplemental allocation of CD assistance to large cities and counties having very high unemployment rates. In this way, an existing program and funding mechanism could be used to assist these needy cities. The use of such a secondary funding mechanism, based on unemployment, may serve as a suitable alternative to continuation of "hold harmless," since at a \$1 billion FY 78 funding level it would reduce the number of hold-harmless losers with populations over 100,000 to 10. It also assists most of the cities that experience a formula entitlement reduction as a result of the proposed formula change.

Change in Entitlement Criteria

The statute currently provides entitlement grants to all central cities of SMSAs, other cities over 50,000 population, and Urban Counties with community development and housing powers which have at least 200,000 population.

The number of entitlement communities could be increased by decreasing the population to as low as 25,000 for cities and 50,000 for Urban Counties. Expanding the entitlement definition provides funding to a number of communities which otherwise would have to compete for discretionary funds. However, there are serious questions about the capacity of smaller cities and, without increased appropriations, available resources would be spread too thinly to be used effectively.



Funds for Small Communities

The present block grant funding formula leaves about \$250 million to be distributed, at the discretion of the Department, to non-metropolitan communities. An additional \$80 million is available for small cities (under 50,000 population) within SMSAs. Competition for these discretionary funds has been sharp. For example, 5,248 communities sought FY 1976 non-metropolitan funding, but only 1,403 received assistance. The resulting proliferation of recipients through provision of very small grants has created an operating burden on the Department and funding of very small towns (some below one thousand population) has put HUD in areas traditionally served by the Department of Agriculture.

Among the major options the Department has explored are:

- (1) State administration of discretionary grants would provide significant administrative efficiencies but has so far proved unpopular with the Congress.
- (2) Setting a minimum population level for CDBG participation could mitigate the problem but would require implementation of a separate rural development block grant program through another delivery mechanism such as the Department of Agriculture.

Conflicting CDBG Purposes

The requirement that applicants provide a certification that maximum feasible priority is being given to activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight (contained in Section 104(b)) has been the source of some controversy. Some contend that aid to low- and moderate-income persons should be the sole purpose of local CD programs, while others defend a wider range of activities aimed at blight or designed to "promote viable communities." This recurring debate appears at least partly rooted in the ambiguity of the statutory purposes.

Eligible Activities

One place in which the question of statutory purposes may have a practical impact is in the area of CD eligible activities. Two principal issues have arisen.

- (1) There has been considerable confusion over the question of what public service costs should be eligible. Options include eliminating all services, which may be too constraining; having a percent of grant cap on services; or making all services eligible, which could change the CD program's present focus on development rather than fiscal relief.
- (2) If the purpose of the CD program is development, it may be appropriate to extend eligible activities to economic development which clearly must be a part of local community development strategies. Expansion of eligibility to economic development activities may cause an overlap with EDA programs, but if community and economic development assistance are delivered together, both may be more usable by local governments. The proposed change also could further stretch scarce CDBG resources and could further vitiate CDBG's focus on serving low-income families.

Attachment 1 (Issue C)

Attachment 1 (Issue C)
Possible Subsidized Housing
Supplemental Appropriation

For the reasons set forth in this memorandum, the funds appropriated for subsidized rental housing in FY 1977 will support a program of 270,000 to 300,000 units rather than 400,000 units proposed in the President's FY 1977 Budget submission. The new Administration will face the question whether to seek an FY 1977 Supplemental Appropriation for Section 8 or Traditional Public Housing in order to increase the size of the program.

The FY 1977 Budget submitted to Congress in January of this year requested \$850 million in new contract authority and \$16,527.9 million in Budget authority (long-term run-out cost) for assisting the development, modernization and acquisition of low income rental housing. These estimates were based upon the assumption that Section 8 program activity would total 400,000 unit reservations for FY 1976 and the transition quarter, with another 400,000 being committed during FY 1977. No new commitments for public housing were assumed beyond an additional 6,000 units of Indian housing. Finally, of the \$850 million requested in new contract authority, the Budget proposed that only \$20 million would be used for modernizing existing public housing projects.

In the ensuing legislative process, contract authority was cut to \$675 million and budget authority was reduced to \$14,870.4 million. More importantly, a number of Congressional mandates were included in both the appropriation language and the accompanying report language, which further exacerbated the dollar reductions in terms of the number of units that actually could be approved. For example, \$120 million of the \$675 million was earmarked for public housing of which \$85 million must be used for new construction. This and the requirement that Section 8 contract authority be used in the proportions set out in the Housing Assistance Plans (57% new and substantial rehabilitation and 43% existing) has the effect of further reducing the total number of units that can be approved, since new construction is substantially more costly per unit than existing housing in terms of both contract authority and budget authority. In addition, modernization was earmarked at \$35 million rather than the \$20 million proposed.

Funds available for FY 1977 were further reduced because Section 8 program activity for FY 1976 and the transition quarter exceeded the 400,000 unit goal by approximately 90,000 units. This reduced the potential FY 1976/TQ carry-over balance of contract authority which would have been available for use in FY 1977 from more than \$300 million to \$150 million.

Although the net impact of these and other actions is still being analyzed, it is anticipated that the total number of Section 8 units that can be approved in FY 1977 will be between 240,000 and 270,000. Traditional public housing will add 30,000 units, bringing the total for FY 1977 to between 270,000 and 300,000 versus the initial Section 8 Budget estimate of 400,000 units.

If the new Administration seeks a Section 8 Supplemental, it will also have to decide whether to seek authority to establish special programs with the contract and Budget authority. The State Housing Finance Agencies, for example, have sought a special set-aside for their projects. The per-unit budget authority required must be doubled for each unit to be financed by a State Housing Finance Agency because the term of the subsidy contracts provided those agencies is longer (40 years) than the 20 year contracts offered to private developers.

Attachment 1 (Issue D)

Attachment 1 (Issue D)
Title IV Energy Conservation Production Act

Public Law 94-385 amends Title V of the Housing and Urban Development Act of 1970 by adding Section 509 which authorizes the HUD Secretary to "undertake a national demonstration program designed to test the feasibility and effectiveness of various forms of financial assistance for encouraging the installation or implementation of approved energy conservation measures and approved renewable-resource energy measures in existing dwelling units."

The Office of Policy Development and Research is currently preparing a Request for Proposals from various organizations where the contractor shall develop alternative programs and implementation procedures for each of three prospective appropriation levels of:

Level 1	-	\$ 10 million
Level 2	-	\$ 50 million
Level 3	-	\$200 million

From the results of this contract it is expected that the Secretary will have a much better understanding of the effectiveness of the various amounts of appropriations.

It is expected that the contract will be completed by approximately April 15, 1977, and a recommendation on appropriation levels should follow shortly.

The RFP containing more detail will be ready within the week and available for your use thereafter.



Attachment 1 (Issue E)
Multifamily Mortgage Assignments

Many FHA insured multifamily projects are experiencing severe financial difficulties. For example, of approximately 7,000 such mortgages, 333 were in default and 868 in assignment as of June 31, 1976. These subsidized mortgages, insured principally under Sections 236 and 221(d)(3), represent a potential financial liability to the FHA fund of approximately \$10 billion.

The primary reason for the difficulties encountered by these projects is that the incomes of their low and moderate income tenants have not kept pace with rapidly escalating operating costs, particularly the high cost of fuel and property taxes. The multifamily subsidy programs preceding Section 8 involved subsidies that did not vary to reflect growing disparities between tenant incomes and operating costs. As a result in 1975, 64% of the non-elderly families in Section 236 projects were already paying more than 25% of their income in rent and 18% were paying more than 40%. Many of these tenants have reached the limit of the ability to incur further rent increases, no matter how necessary those rental increases may be to the continued viability of the projects in which they live. And, because of location or amenities, low-income families may be these projects' only market. Future substantial increases in fuel costs and property taxes would exacerbate these problems even further.

The problems of some of these projects also arise, in part, from the fact that during earlier periods when production was a paramount goal, operating expenses were sometimes deliberately understated to make projects "feasible" and thus eligible for mortgage insurance.

The Department has placed a high priority on maintaining this subsidized housing stock for its intended low and moderate income tenancy -- but the problems are profound. Many projects simply do not generate enough income to pay their debt service and expenses; in some cases the projects do not even generate enough revenue to pay their operating costs.

Various steps have been considered to stem the tide of assignment of multifamily project mortgages. Some of these are described below:

1. The Section 8 LM Program. In FY 1975, the Department designated 100,000 units of Section 8 subsidies to be used in troubled HUD insured projects. This subsidy provides the difference between 25% of an eligible tenant's income and the rent necessary to support the unit. The program provides assistance to tenants already in place but unable to meet the burdens of higher rents and also provides owners with a subsidy to entice families into vacant units in projects where vacancies are becoming a significant factor in meeting operating costs. The program has allowed many projects to increase rents without losing entirely the market for which they were intended. By stabilizing project finances, the subsidy should serve to reduce assignments and keep many projects viable housing resources for lower income families.

Initial sampling indicates that Section 8 subsidies have gone to projects with serious default histories, high vacancy rates, or very high rent to income ratios. In many cases, the grant of the subsidy has been conditioned on the effectuation of necessary repairs or management changes. The device has its limitations, however. First, the use of Section 8 funds in this way makes them unavailable for other purposes such as new construction or "finders keepers" existing subsidies. Second, since many unsubsidized FHA insured projects have rents higher than local Fair Market Rents, the Section 8 subsidy is not useful in those projects. Third, Section 8 is only available to tenants with incomes less than 80% of the median, hence tenants above that income range could be faced with rental increases they may be unwilling or unable to absorb, reducing economic integration in an assisted project.

2. Operating Subsidies. An alternative to subsidies to individual residents is an operating subsidy to the project. The 1974 Housing and Community Development Act authorized operating subsidies for Section 236 and HUD has been ordered to implement this operating subsidy provision in several judicial proceedings. This operating subsidy

mechanism has several serious limitations, however. First, it is available only to Section 236 projects which represent a limited portion of the projects in trouble. Second, the funds currently available for operating subsidies are relatively limited, although appropriations could be sought to make the program more viable. Third, an operating subsidy such as that provided for Section 236 projects runs the risk of providing a windfall to some projects which have no need for such assistance. Finally, the 236 operating subsidy provision only accounts for utility and local property tax costs, and vitiates the incentives for the project to limit utility costs or for local governments to grant any tax benefits to assist the project.

3. Balloon Payment Mortgages. In addition to increasing a project's income, HUD could also seek ways to decrease the project's costs. An example of such a mechanism is the "balloon mortgage" seriously considered by the Department in 1975 and presented as an option to OMB in October of that year. A "balloon" mechanism would allow a project to pay only that part of its debt service which it could afford and to balloon the remainder of the mortgage service to the end of the mortgage term. The program envisioned would have given non-profit subsidized projects one chance to prove themselves viable at a more realistic debt service.

The balloon option would require HUD to accept assignment of the project mortgage and to pay out an insurance claim, so that HUD could then act as mortgagee and reduce the debt service on the project. Although the insurance funds would have to pay the claim, they would retain the mortgage as an asset.

This program had serious drawbacks. First, the balloon mortgages would be unmarketable so there would be a significant cash drain on the insurance funds. Management of the assigned mortgage would be a major administrative problem. Also, because of the generous benefits being realized, there would be a danger of a stampede of projects to take advantage of the forbearance and balloon relief. Finally, HUD often would be forced to absorb the entire outstanding balloon payment at the end of the mortgage period because it represented more than the project was worth at that time. But even if the balloon device merely delayed the inevitability of a default on the mortgage principal until the end of the mortgage term, at least it would have retained the project in the private stock of subsidized housing for that mortgage

time. Also, substantial safeguards were built in to the "ballooning" proposal to prevent the most obvious potential abuses.

4. Foreclosure and Sale. The Department has been engaged in a moratorium on foreclosures of assigned projects in which the assignment was not the fault of the project sponsor. This moratorium has resulted in the Department acquiring a substantial portfolio of assigned multifamily mortgages. An alternative strategy would be for HUD to accept assignments, rapidly foreclose, and then dispose of the project in conformance with whatever balance between protecting the tenants and protecting the insurance funds the Department believes to be appropriate. The question of disposition of multifamily projects is beyond the scope of this paper, but the option of massive foreclosures is nonetheless available. It has been rejected by this Department to date as inappropriate in view of our responsibility to the tenants of existing subsidized projects.



Attachment 1 (Issue F)
Housing Assistance Block Grant

The Department has prepared staff papers outlining a Housing Assistance Block Grant (HABG) proposal, which would consolidate into one funding mechanism, several of the present Federal assisted housing programs. States and large cities which currently receive Community Development Block Grant (CDBG) funding would be entitled to a formula-determined grant of budget authority (long-term funding) which they could use to finance, develop, operate and maintain subsidized housing or to provide assistance directly to low-income families through a housing allowance program.

The concept of a housing block grant program is not a new one, having been introduced in Congress as early as 1973, but Federal budgetary procedures and lack of experience with block grants doomed those early proposals. The advent of the budget authority concept has solved the problem of providing local governments with the long-term commitment of funding necessary for housing and CDBG has proven the viability of the block grant idea. And, there has been growing recognition of the need for giving local governments greater control over the application of Federal funds within their borders to assure better inter-program coordination, to increase citizen participation in decisions as to the use of those Federal resources, and to guarantee that Federal funds are spent in a way clearly suited to local needs and conditions.

With the requirement that a community prepare a Housing Assistance Plan to receive its CDBG funding, the Congress already has attempted partially to transfer authority for assisted housing to local governments. However, the responsibility for design and delivery of assistance has been left with HUD, semi-autonomous public housing agencies and private builders. A housing block grant program is the next logical step in vesting in local and state governments a meaningful role in planning for and providing housing assistance. However, because of differing levels of capacity among local and state governments, adequate technical assistance and a reasonable transition period will have to be provided.

HUD would allocate funds, monitor and audit the performance of the entitlement entities, provide technical assistance and ensure the enforcement of major national goals such as assuring non-discrimination. And, the Department would



continue to provide FHA insurance for newly constructed or substantially rehabilitated housing on an actuarially sound basis to facilitate the financing of low-income housing. But state and local governments would decide on the mix of housing programs which would be provided in their communities.

Housing Assistance Block Grants are consistent with a welfare reform proposal to provide a minimum income to needy families. Many housing assistance needs will remain unfilled even with such an income maintenance strategy, and a housing supply side program will remain necessary. Moreover, housing is not only an income problem, but also has serious community and economic development implications. An HABG program treats housing as a neighborhood and community development issue. Such a program would give governors and mayors the resources to undertake coordinated and comprehensive physical development strategies, which necessarily include low-income housing, free of the complex constraints and "red-tape" of current housing programs.

Among the most serious issues posed by the movement towards a block grant mode of delivery for housing assistance include:

- The appropriate formula for allocating available resources to entitlement governments.
- The administrative inter-relationships between the CDBG and HABG programs in terms of application procedures, monitoring responsibilities, etc.
- Whether direct loan programs such as Section 202 elderly housing or Section 312 rehabilitation loans should be maintained as separate assistance programs.

A detailed policy paper outlining the proposed operation of an HABG program and the outstanding issues is in draft form and will be completed in January. Legislative drafting has already begun and research on potential allocation formulas is nearly complete. There also have been discussions of the proposal with staff at OMB. Thus, should the new Administration choose to do so, an HABG proposal could be presented to the Congress by early spring.

Attachment 1 (Issue G)
Site and Neighborhood Standards
for Assisted Housing

The Department is now in the process of reviewing its standards for the acceptability of proposed sites for low- and moderate-income housing projects to be assisted under the HUD subsidized housing programs (such as the Section 8, Section 202, Section 235, Section 236 and Low Rent Public Housing Programs). The major problem areas include the criteria for projects located in 1) areas of minority concentration, 2) racially-mixed areas, and 3) areas with an undue concentration of other assisted housing. The Department's present intention is to publish within the next month a Notice of Proposed Rulemaking to seek public comment on draft site and neighborhood standards. The new Administration would then be in a position to analyze the substantial public comments likely to be received and to publish final standards.

One major issue which site-selection standards must address is under what circumstances, if any, subsidized housing may be located in areas with a substantial concentration of racial minorities. The policy which the standards should serve may simply be to ensure that people of all races have a variety of housing opportunities available to them. If comparable housing is available to minorities inside and outside an area of racial concentration, so that a minority family has the option to live outside an area of minority concentration, then the policy of insuring housing opportunities on a nondiscriminatory basis is satisfied. If the policy to be served is to achieve integration, more restrictive standards may be necessary.

Site-selection criteria also must deal with the problem of areas with a significant concentration of lower-income families in assisted housing. Stringent criteria can be sought to avoid congregating large numbers of problem poor families in particular neighborhoods -- since such congregations not only can create anti-social cultural environments but also can lead to serious management and vandalism problems in the assisted housing stock as well as to a deterioration of surrounding neighborhoods.

On the other hand, such areas may be particularly susceptible to renewal programs of which assisted housing is an integral part. And, in some older cities, all neighborhoods containing sites for new housing construction may be impacted with lower-income concentrations, but the need for housing persists nonetheless.

The Department first developed site selection standards for low-rent public housing in 1968, under the authority of Title VI of the Civil Rights Act of 1964. The policy was simply to avoid sites in areas of racial concentration unless no acceptable alternative sites outside such areas were available. Between 1969 and 1970 the Department modified its site selection system to reflect the requirements of Title VIII of the Civil Rights Act of 1968 (Section 808) that the Secretary administer HUD programs "in a manner affirmatively to further the policies of this Title." The new guidelines provided criteria for approving sites for both public housing and FHA-insured assisted housing (primarily Section 236). Factors included not only the question of minority concentration, but also the overall need for the proposed housing project, the availability of community services, the undue concentration of subsidized units without regard to racial concentration, the environmental impact of the project, the availability of minority job opportunities, the capacity of the sponsor and quality of the prospective management of the project.

Publication of new site criteria was hastened by the 1970 Third Circuit Court of Appeals decision in Shannon v. HUD that the Department "must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it the relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Act." Observing that desegregation is not the only goal of the national housing policy, the Court left room for HUD to approve proposals which might add to racial concentration in "instances where a pressing case may be made for the rebuilding of a racial ghetto," so long as HUD carefully weighed the alternatives and made an informed judgment that "the need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantages of increasing or perpetuating racial concentration."

After another court case regarding discriminatory site selection in Chicago (Gautreaux v. Romney), the Department in January 1972 published a revised Project Selection Criteria which established a formal system for evaluating proposed sites for assisted housing. The criteria prohibited locating a project in an area of minority concentration, unless the project was necessary to meet an "overriding need" (undefined) for housing in the area or "sufficient and comparable" (also undefined) opportunities for assisted housing existed outside of areas of minority concentration. In particular, HUD offices simply approved a project outside an area of racial concentration at the same time as approving one inside such an area. On the basis of Shannon, rehabilitation projects were exempted from these criteria.

The Section 8 rental assistance program, enacted as part of the Housing and Community Development Act of 1974, states as statutory purposes the "reduction of the isolation of income groups within communities and geographical areas" and the "spatial deconcentration of housing opportunities for persons of lower income" (Section 101(c)(6)). The Act requires that a community, as a condition to receiving its Community Development Block Grant, prepare a housing assistance plan (HAP), which must identify the general locations of proposed housing for lower-income persons, with the objective of "promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low income persons" (Section 104(a)(4)(c)).

The site-selection standards now being used for the Section 8 program allow new construction in an area of minority racial concentration when sufficient and comparable opportunities are available outside the area of concentration. Section 8 projects may be located in racially-mixed areas only if the project would not "tip" the neighborhood by significantly increasing the proportion of minority to non-minority residents in the area. Only general language requiring that site selection decisions further the objectives of the civil rights laws constrains the location of Section 8 substantial rehabilitation projects, although in practice field offices apply the same criteria as for new construction. Section 8 existing housing is not subject to site-selection standards because that program is based on a shopping or "finders-keepers" principle under which families select the location of their own housing.

With respect to avoiding concentrations of low-income persons in assisted housing, the site selection standards used in the Section 8 program for both new construction and substantial rehabilitation simply repeat the statutory objective of avoiding the placement of assisted housing in such areas.

Our experience indicates the need for a uniform set of site and neighborhood standards which clearly articulate requirements for the location of assisted housing. Inconsistent decisions among HUD field offices have resulted from the lack of a simple set of criteria, and the ambiguity of current requirements.

There is a question concerning whether to exempt or impose a different -- presumably a lesser -- standard for substantial rehabilitation projects, as opposed to new construction. The goal of rehabilitating blighted, abandoned or substandard dwellings in central city areas where low-income families live and preserving existing neighborhoods must be weighed against the goal of expansion of housing opportunities outside of areas of minority or subsidized housing concentration.

The final tension inherent in the site selection issue is the role of Federal and local government in balancing the competing interests, and determining sites for assisted housing. While the Federal Government has an historic role in assuring the rights of minority and lower income families, local governments have been given an increasing role in determining the use of Federal funds within their jurisdictions. Local officials have the greatest capacity for assessing local needs, coordinating the impact of differing Federal programs on those needs, leveraging public and private resources and responding to public concerns. These factors all militate in favor of a greater local role in siting assisted housing -- although that role potentially competes with Federal deconcentration objectives.

Attachment 1 (Issue H)

Attachment 1 (Issue H)
Design of the Public Housing Program

On November 18, 1976, the Department published in the Federal Register a Notice of Proposed Rulemaking (copy attached) for the Traditional Public Housing Program reestablished by the Housing Amendments of 1976 and the HUD-Independent Agencies Appropriation Act for 1977. The Notice states that interested parties are invited to submit written comments and suggestions regarding the proposed rule by December 20. After comments are received, the Department will analyze them and publish a final rule. Our current intention is to publish a final rule in mid-January so the program can be implemented as soon as possible. However, if this date slips, the new Administration will want to issue the final regulation during its first few weeks in office. If the regulation has been issued before the turnover, the new Administration will want to consider whether to modify it in any respect.

There are several significant issues which must be addressed in designing the program. The first issue is whether the regulation will state a requirement, a preference or neutrality as between family and elderly housing. Historically, Public Housing Authorities have preferred to build housing for the elderly because it is easier to manage and more popular in the community, and our limited program experience to date with the Section 8 new construction program suggests that it too is generally serving the elderly better than large families. 86% of the units moving to start of construction in 1976 and the Transition Quarter were for elderly housing. The regulation published for comment requires that public housing funds be used to meet the needs of household types in the jurisdiction of the Public Housing Authority whose needs are not being met proportionately to their share of total housing needs in the Housing Assistance Plans prepared as a prerequisite to receiving a Community Development Block Grant. Thus, for example, if a community's Housing Assistance Plan shows a goal of 1,000 units of housing for the elderly and 1,000 units of housing for large families and if all 500 Section 8 units funded thus far have been for the elderly, then the Public Housing Authority would be required to use its public housing funds for projects for large families. In the unusual situation where Section 8 is meeting the needs of large families better than the needs of the elderly, the public housing funds would be used for housing for the elderly.

A second important issue is whether to express a preference as between development methods. One method is the so-called "turnkey" method under which the Public Housing

Authority would select a site and advertise for proposals from developers. The developer selected would then build the project and turn it over to the Public Housing Authority. The other method is the conventional competitive-bid method under which the Public Housing Authority would not only select the site but would also do detailed development work on the project. The Department's experience has been that the turnkey method produces housing more rapidly than the conventional competitive-bid method. The Department also has data indicating that turnkey housing is less expensive on a per-unit basis, although there are differing opinions within the Department and among Public Housing Authorities on this point and with respect to which method produces higher quality housing.

The regulation published for comment requires the use of the turnkey method unless a Public Housing Authority can demonstrate to the satisfaction of the HUD field office in its area that total costs, including administrative costs of the conventional method, would be less than the cost of the turnkey method.

A third substantial issue is what requirements to impose regarding the financial feasibility of a proposed project. Operating subsidies for public housing have climbed rapidly in recent years, are expected to total \$576 million in FY 1977, and will rise to more than \$1 billion in 1981. The regulation published for comment requires that the Public Housing Authority demonstrate that the project can be operated for at least five years without an operating subsidy, a requirement which may be unrealistic, particularly in light of the regulation's emphasis on scatter-site housing, which tends to have higher operating costs.

A closely related question, which will be addressed in a separate regulation still in Departmental clearance, is what guidance the Department should give to Public Housing Authorities regarding tenant selection policy. The Department's tenant selection policy may result in a better income mix, higher rent receipts, and thus less need for operating subsidies.

federal register

THURSDAY, NOVEMBER 18, 1976



PART II:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Office of Assistant Secretary
for Housing—Federal Housing
Commissioner**

**TRADITIONAL PUBLIC
HOUSING PROGRAM**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 841]

[Docket No. R-76-426]

TRADITIONAL PUBLIC HOUSING PROGRAM

Notice of Proposed Rulemaking

Notice is hereby given that the Department of Housing and Urban Development (HUD) proposes to amend 24 CFR, Chapter VIII by adding a new Part 841, Traditional Public Housing Program. The U.S. Housing Act of 1937 (Act), as amended, authorizes HUD to provide financial and technical assistance for the development and operation of low-income housing projects and provides that not less than a specified amount of such assistance be made available to assist in financing low-income housing projects for ownership (other than under Section 8 of the Act) by Public Housing Agencies (PHAs). Title 24, Part 275, except for § 275.8, will be cancelled upon publication of this Part as a final rule, and the Appendix on prototype cost in Part 275 will be transferred to this part. Subpart A sets forth the general requirements and the basic policies for the development of projects by a PHA. Subparts B and C set forth the procedures for construction of a project. Subpart D sets forth the procedures for acquisition of an existing project (properties that do not require rehabilitation) or acquisition of a project requiring substantial rehabilitation and the procedures for accomplishing necessary rehabilitation work.

The following is a brief summary of significant features of the proposed rule:

1. The regulations applicable to other types of projects, including modernization, Indian Housing and Section 8 projects are contained in other parts of this chapter.

2. It is intended that projects under these regulations provide primarily scattered site or otherwise low-density housing for families, including large families with children, since the housing needs of such families are not adequately served by other housing programs. Accordingly, § 841.103 requires that public housing assistance shall be used to meet the needs of household types in the jurisdiction of the PHA whose needs are not being met proportionately to their share of total housing needs in the jurisdiction of the PHA, as shown by the approved Housing Assistance Plan (HAP) or HAPs applicable to the jurisdiction, or, in the absence of such HAPs, as determined by HUD.

3. Section 841.108, titled Site Selection, indicates that project sites are subject to Project Selection Criteria. The Department expects to publish in the near future proposed rulemaking that would establish new site and neighborhood standards for a number of housing assistance programs, including the traditional public housing program.

4. Section 841.109 requires that the design of the project must as a minimum comply with HUD Minimum Property Standards or HUD Minimum Design Standards for Rehabilitation for Residential Properties, as applicable. In addition, consistently with Section 6(b) of the Act, projects shall include the specified standards designed to reduce operation and maintenance costs and to promote the well-being of tenants.

5. Sections 841.111 through 841.113 set forth the process for notification by the Field Office of the amount of funds available and for submission, review and approval of an Application. An applicant must demonstrate that it meets the definition of a PHA under the Act and has the required legal authority to perform all the functions of a PHA under this Part. As a prerequisite to Application approval, the Field Office must determine, among other things, that the PHA has adequate administrative capability to operate the project.

6. For new construction projects, the dwelling construction and equipment cost may not exceed 110 percent of prototype costs. For acquisition projects, the prototype cost limitation is not applicable; however, § 841.117(b)(2) provides that for acquisition projects the Total Development Cost shall not exceed 90 percent (or appropriately lower percentage if the acquired project has less than a 40 year useful life) of the imputed development cost of a comparable hypothetical newly constructed low-income housing project unless a higher amount is necessary to meet a locally established plan for neighborhood preservation and revitalization of existing housing and is specifically approved by the Assistant Secretary for Housing.

7. Section 841.117(c) states the Financial Feasibility Test which must be met prior to approval of a Development Program. In addition, § 841.113(a)(2) requires that the Field Office determine that it "is likely" that the test can be met prior to approval of an application. The PHA must demonstrate that for the first five years of operation the project's estimated average annual operating expense does not exceed the estimated annual operating income without use of operating subsidy, based on a 95 percent occupancy by a tenant body selected in accordance with specified criteria based on the provisions of section 6(c)(4)(A) of the Act. At no time shall an operating subsidy be paid, which, together with the debt service annual contribution, would exceed the Fair Market Rents for an equivalent number of similar housing units less the aggregate rents paid by the project tenants. The special requirements for projects developed under this part will be reflected in 24 CFR Part 890, Annual Contributions for Operating Subsidy.

8. Section 841.117(d) provides that HUD may require the PHA to obtain development loan funds from sources, other than HUD, secured by a pledge of HUD's agreement, under the ACC to advance monies to the PHA or to make annual

contributions payments. Generally, projects will be permanently financed by the sale of PHA bonds which are tax exempt under section 11(b) of the Act. This is the method of financing which has traditionally been used for public housing projects under the Act.

9. Because past experience has demonstrated that the turnkey method is substantially more efficient, § 841.301 requires a PHA to use that method rather than the conventional competitive bid method for new construction projects, unless the PHA can demonstrate in support of its application that the conventional method would offer specific advantages over the turnkey method.

10. Section 841.406 permits a PHA, subject to Field Office approval and for acquisition projects under Subpart D only, to develop a list of prequalified contractors or developers and to solicit bids or proposals only from those on this list.

11. The Department promulgated an interim rule for the PHA Acquisition of HUD-Owned Properties and Properties with HUD-Insured and HUD-Held Mortgages (24 CFR Part 845, published in 41 FR 23292, June 9, 1976). Since the scope of this proposed rule will include the acquisition and rehabilitation of properties provided for under Part 845, it is intended to cancel Part 845 upon publication of Part 841 as a final rule. All comments received with respect to Part 845 will be considered in preparing the final Part 841.

12. Section 841.117(c) provides that a PHA may establish requirements or preferences for those living in the jurisdiction of the PHA at the time of application provided that no such tenant selection requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant nor upon the length of time the applicant has resided in the jurisdiction and provided that applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction. It is intended that this provision will be made applicable to all public housing projects, and the interim rule on admissions (24 CFR Part 860, Subpart B) when it is finalized will contain such a provision.

Interested parties are invited to submit written comments and suggestions regarding the proposed rule by December 20, 1976, addressed to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Comments should refer to docket number and date. All material submitted will be considered before adoption of a final rule. A copy of each communication will be available for public inspection during regular business hours at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. In addition, a Finding of Inapplicability of inflation

impact statement requirements has been made in accordance with HUD procedures. The Findings of Inapplicability are available for inspection with the Rules Docket Clerk at the above address.

PART 841—TRADITIONAL PUBLIC HOUSING PROGRAM

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Appendix A—Prototype Cost Limits for Low-Income Housing.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 5(b), U.S. Housing Act of 1937 (42 U.S.C. 1437c(b)).

Subpart A—General Requirements

§ 841.101 Applicability and scope.

(a) *Applicability.* The U.S. Housing Act of 1937 (Act), as amended, authorizes the U.S. Department of Housing and Urban Development (HUD) to provide financial and technical assistance to public housing agencies for the development and operation of low income housing projects. This Part states the regulations under which such projects are to be developed by a Public Housing Agency (PHA) with financial assistance pursuant to Sections 4 and 5 of the Act under an Annual Contributions Contract (ACC). The regulations applicable to

other types of projects, including modernization, Indian Housing and Section 8 projects, are contained in other parts of this chapter.

(b) *Scope.* Subpart A of this part sets forth the general requirements and the basic policies for the development of projects by a PHA. Subparts B and C of this part set forth the procedures for the construction of a project. Subpart D of this part sets forth the procedures for acquisition of an existing project (properties that do not require rehabilitation) or acquisition of a project requiring substantial rehabilitation and the procedures for accomplishing necessary rehabilitation work. For information on income limits for admission to and occupancy of projects and rental requirements under this part, refer to 24 CFR Part 860, and on the payment of operating subsidy, refer to 24 CFR Part 890 (see Section 841.117(c)).

§ 841.102 Definitions.

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

(b) *Annual Contributions Contract (ACC).* A contract (on a form prescribed by HUD) for loans and annual contributions, execution of which creates legal obligations between HUD and a PHA, under which HUD finances the development and provides financial assistance for operation of a project under the Act and the PHA agrees to comply with HUD requirements for the development and/or operation of the project. The amount of the maximum annual contribution is the amount charged against contract authority and this amount multiplied by the number of annual contributions over the term of the ACC is the amount charged against budget authority.

(c) *Cooperation agreement.* An agreement between a PHA and local governing body assuring tax exemption and certain local governmental cooperation and services in respect to the development and operation of a low-income housing project under the Act and providing for payments in lieu of taxes.

(d) *Housing Assistance Plan (HAP).* (1) A HAP meeting the requirements of § 570.303(c) of the Community Development Block Grant (CDBG) regulations (24 CFR Part 570), which is submitted by local government as part of the block grant application, and is approved by the Field Office Director.

(2) A HAP, meeting the requirements of § 570.303(c), submitted by a local government not participating in the CDBG Program and approved by the Field Office Director.

(e) *HCD Act.* The Housing and Community Development Act of 1974 (42 U.S.C. 5301).

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

(g) *Preliminary loan contract.* A contract between HUD and the PHA under which HUD loans funds to the PHA, up

to a stated limit, to pay the costs of preliminary surveys and planning of a project.

(h) *Program reservation.* A written notification by HUD to the PHA, which is not a legal obligation, expressing HUD's determination, subject to fulfillment by the PHA of all legal and administrative requirements within a stated time, to enter into a new or amended Preliminary Loan Contract or ACC covering the stated number of housing units, or such lesser number as is consistent with the authority of HUD to enter into such contracts: *Provided,* That funds are available for this purpose.

(i) *Project.* An entire undertaking to provide housing under the Act including all real or personal property, funds and reserves, rights, interests and obligations, and related activities.

(j) *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 projects and is determined by HUD to be eligible to undertake projects under this Part. Other regulations which govern the administration of projects by a PHA are set forth in 24 CFR Chapter VIII, as amended from time to time.

§ 841.103 Types of projects.

(a) *Determination of type of project.* Assistance under this Part shall be used to meet the needs of household types in the jurisdiction of the PHA whose needs are not being met proportionately to their share of total housing needs in the jurisdiction of the PHA, as shown by the approved HAP or HAPs applicable to the jurisdiction, or in the absence of such HAPs, as determined by HUD. In determining the extent to which the needs of any household type are being met, units proposed or not yet completed shall be counted only if there is a commitment or reservation of funds or contract authority for the provision of federal or other assistance.

(b) *Low-density housing for families with children.* Projects approved under this part for families with children, including large families (families requiring three or more bedrooms) shall to the maximum extent practicable consist of scattered site or otherwise low-density housing.

(c) *Restriction on use of high-rise elevator structures.* High-rise elevator structures shall not be provided for families with children regardless of density unless the Field Office makes a determination that there is no practical alternative. High-rise buildings for elderly shall not be used unless a determination is made by the Field Office that such construction is appropriate taking into consideration land costs, safety and security factors.

§ 841.104 Civil rights and equal opportunity.

(a) *Title VI and Title VIII and Executive Order 11063.* Title VI of the Civil

Rights Act of 1964 (42 U.S.C. 2000d) and Executive Order 11063, which prohibit discrimination on the basis of race, color, creed or national origin in federally-assisted programs, and Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601), which prohibits discrimination based on race, color, religion, sex or national origin in the sale or rental of housing, apply to PHAs under this part.

(b) *Vocational rehabilitation.* Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination in federally-assisted programs against any otherwise qualified individual solely by reason of a handicap, as defined by the Secretary of Health, Education and Welfare, applies to PHAs under this part.

(c) *Executive Order 11246.* Contracts for construction work in connection with Projects under this part are subject to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), and applicable implementing regulations (24 CFR, Part 130; 41 CFR, Chapter 60), rules, and orders of HUD and the Office of Federal Contract Compliance Programs of the Department of Labor. Executive Order 11246 prohibits discrimination and requires affirmative action to ensure that employees or applicants for employment are treated without regard to their race, color, religion, sex or national origin.

(d) *Section 3 of the HUD Act of 1968.* The Projects under this part are subject to Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), which requires that, to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with a project be awarded to business concerns which are located in or owned in substantial part by persons residing in the project area.

(e) *PHA's employment practices.* In connection with the development or operation of any project, the PHA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The PHA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. The PHA shall comply with all HUD requirements against discrimination with respect to employment by the PHA or contractors of the PHA. The PHA shall adopt and promulgate regulations with respect to the PHA's employment practices which shall be in compliance with this paragraph. A copy of these regulations shall be posted in the PHA office and a copy shall be submitted to HUD promptly after adoption by the PHA.

§ 841.105 Economy and efficiency.

Each project shall be developed in such a manner that it will not be of elaborate or extravagant design or materials, and

shall be developed and administered to promote servicability, efficiency, economy and stability and to achieve the economic and social well-being and advancement of the tenants.

§ 841.106 Prevailing wage rates.

Not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276) shall be paid to all laborers and mechanics employed in the development of the project. Not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD, shall be paid to all architects, technical engineers, draftsmen and technicians employed in the development of the project.

§ 841.107 Relocation and acquisition.

Projects shall be developed in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601) and HUD policies and requirements thereunder (24 CFR Part 42). Development Cost may include the cost of compliance with the Uniform Act as well as the actual reasonable moving expenses of a family which is temporarily moved from a project site during construction and is returned to the site after completion.

§ 841.108 Site selection.

Project sites shall be subject to the Project Selection Criteria (24 CFR Part 200, Subpart N). The physical characteristics and cost of the site, the availability of utilities and of access roads to the site shall facilitate economical construction and operation of the project.

§ 841.109 Property standards.

As a minimum, projects shall be developed in compliance with HUD Minimum Property Standards (24 CFR Part 200, Subpart S), or HUD Minimum Design Standards for Rehabilitation for Residential Properties, as applicable, and applicable state and local laws, codes, ordinances and regulations. In addition and subject to § 841.105, the design of a project shall also include the extra durability and special features required for safety and security and economical maintenance, the provision of amenities designed to guarantee a safe and healthy family life and neighborhood environment, the application of good design as an essential component for safety and security as well as other purposes, the maintenance of quality in architecture to reflect the standards of the neighborhood and community, and the need for maximizing the conservation of energy for heating, lighting and other purposes. Where such housing is justified by the PHA and approved by the Field Office, projects for the elderly or handicapped shall comply with Section 209 of the HCD Act and projects for congregate or single room occupant housing shall comply with the appropriate HUD guidelines and standards.

§ 841.110 Contracts.

(a) *Timing.* The ACC for a project shall not be executed until the PHA has adopted and HUD has approved the Development Program (§ 841.117). The PHA shall not enter into any Construction Contract, Preliminary Contract of Sale, Contract of Sale, contracts for rehabilitation work or contracts to acquire a property until after execution of the ACC.

(b) *Contracts Requiring HUD Approval.* The PHA shall not, without the prior written approval of HUD, enter into, execute or approve any agreement or contract for (1) personal, management, legal or other services with any person or firm where the initial period or term of the agreement or contract (including any renewal) is in excess of three years, or (2) where the amount of the agreement or contract is in excess of the amount included for such purpose in the HUD-approved development cost budget or operating budget or an amount specified from time to time by HUD, as the case may be, or (3) where the agreement or contract is for legal or other services in connection with litigation.

§ 841.111 Notification of Housing Assistance Availability.

In the context of the constraints on available housing assistance funds, including those due to 24 CFR Part 891 (Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds), the Field Office shall determine the geographic areas in which the housing is to be located, the extent to which assistance is to be made available for new construction, acquisition with substantial rehabilitation or acquisition of existing housing and the sizes and types of housing. As promptly as possible, the Field Office shall notify the appropriate PHAs of the availability of the housing assistance for which they may apply. The Notification shall include information reflecting the Field Office's determinations and shall state the deadline date for submission of an Application. To the extent feasible, a copy of the Notification should be sent to the Chief Executive Officers of local governments in the applicable geographic area, representatives of the media and organizations interested in housing and urban development. Appropriate instructions, forms and other program information necessary to prepare an Application shall be sent by the Field Office to each PHA.

§ 841.112 Application Submission.

(a) *Eligibility.* To be eligible to participate under this part, an entity shall demonstrate that it meets the definition of a PHA and has the required legal authority to perform all the functions of a PHA under this part. Generally, the entity will have been created pursuant to a state housing authorities law. In such cases, a reference in the Application to ACCs previously entered into will be sufficient to establish the identity of the entity and establish prima facie eligi-

bility. Where the eligibility of such an entity has not been previously approved by HUD, the Field Office shall advise the entity of the documents that must be submitted to establish eligibility. Where the entity was not created pursuant to a state housing authorities law, the evidence that the entity has the required legal authority shall be submitted to the Field Office for review and approval. This evidence shall include citations to and copies of state or local law, the charter or other organizational papers establishing the entity (where the entity is an agency or instrumentality, the documentation required by § 811.104 (a) and (b) of this chapter shall be included) and an opinion from counsel that the entity has all the legal authority required to develop and operate a low-income project under this part.

(b) *Application.* To apply for a Program Reservation, a PHA shall submit an Application on the form prescribed by HUD, identifying number and types of units, site or location insofar as it has been determined and relationship to HAPs and site requirements, whether new construction, acquisition with substantial rehabilitation or acquisition of existing housing is proposed, the proposed production method which in the case of new construction shall be the turnkey method unless adequate justification is furnished, a showing that the household types for whose needs the project will be developed will be in accordance with § 841.103(a), and a statement that the project will be developed in accordance with § 841.103 with any justification required thereunder. If the Application identifies a site or sites, the Chief Executive Officer of the unit of general local government in which the proposed housing is to be located should have been requested by the PHA to provide a letter stating his finding as to consistency with the locality's approved HAP, or in the absence of a HAP as to whether there is or will be available in the area public facilities and services adequate to serve the proposed project. Where such letter has been provided, it shall be attached to the PHA's Application. The Application shall also be accompanied by a resolution of the local governing body authorizing execution of a Cooperation Agreement. If a Cooperation Agreement already exists for the location sufficient to cover the number of units in the Application, a statement to this effect may be included in the Application.

(c) *Preliminary Loan.* The Application for a Program Reservation may include an application for a preliminary loan, which must be accompanied by a resolution of the local governing body approving the application for a preliminary loan. Such an application shall state the amount requested and explain the purpose for which these funds are to be used (§ 841.115).

§ 841.113 Field Office Review and Approval of Applications.

(a) *Prerequisites to Application Approval.* The Field Office shall begin proc-

essing of complete Applications promptly after receipt. Each Application will be evaluated on the basis of all pertinent factors under this part. In addition to meeting the requirements of § 841.112, an Application shall not be approved unless the Field Office determines that:

(1) The PHA's Application meets the requirements of § 841.103.

(2) It is likely that the financial feasibility requirements for approval of the Development Program under § 841.117(c) can be met.

(3) The PHA has the capability to provide adequate administration of the development and operation of the project and other HUD-assisted projects of the PHA in compliance with all applicable HUD requirements with initial HUD assistance and thereafter only occasional need for HUD assistance. Approval of an Application shall not be withheld because of minor administrative deficiencies. As a minimum, the PHA shall have the capability to comply with all HUD requirements for prompt completion of development, the maintenance of complete and accurate books of accounts and records, the proper handling of funds, the timely preparation and submission of reports, the maintenance of the property, the occupancy of the housing units, determination of and prompt collection of rents and the prompt processing of evictions in case of nonpayment or other serious breach of a lease.

(b) *Designated Site.* If specific sites are designated for the proposed project in the Application, the Field Office shall determine whether to approve the Application, subject to subsequent tentative site approval after receipt of the Preliminary Site Report and compliance with Section 213 and A-95, or withhold decision until after completion of those steps. In either event, the Field Office shall promptly initiate the necessary action to obtain compliance with Section 213 and A-95:

(1) For purposes of compliance with Section 213 of the HCD Act, HUD's Regulations, Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds (24 CFR Part 891; published in 41 FR 35660, August 23, 1976) shall be followed.

(2) For A-95 clearance, HUD's Interim Regulations, Implementation of OMB Circular A-95 (24 CFR Part 52; published in FR 41874, September 23, 1976) shall be followed.

(c) *Notification of deficiencies.* If the evaluation discloses deficiencies that can be corrected, the Field Office shall notify the PHA in writing of the deficiencies and give the PHA a reasonable opportunity to correct the deficiencies.

(d) *Notification of approval.* The Field Office shall issue a Program Reservation to the PHA whose Application is approved, specifying new construction, acquisition with substantial rehabilitation or acquisition of existing housing, the production method and the location. If the Application is approved for fewer units than requested, the Program Reservation shall be accompanied by a statement of the reasons for not approving

the number of units requested. The Program Reservation shall set a time limit of one year within which the PHA must submit an approvable Development Program. The Field Office shall cancel the Program Reservation if the time limit is exceeded unless the Field Office determines, for good cause, to extend the time limit.

(e) *Notification of Disapproval.* Any PHA whose Application was not approved by the Field Office shall be sent a letter notifying the PHA of the determination and of the reasons therefor.

(f) *Deficiency or Excess of Available Housing Assistance.* (1) Where approved Applications are or become insufficient to utilize fully the available contract authority and budget authority, the Field Office may give further consideration to other Applications, affording PHAs an opportunity to remedy any deficiencies or may solicit an Application from other appropriate PHAs for localities to which the housing assistance may be reallocated.

(2) If the available contract authority and budget authority are not sufficient for all the approvable Applications, the Field Office shall approve the Applications which have the best combination of administrative capability, consistency with HAPs and § 841.103, prior experience of the PHA, comments, if any, received from the appropriate A-95 Clearinghouse and the unit of general local government and other factors under this part.

§ 841.114 Time Schedule.

Promptly after issuance of a Program Reservation, the PHA shall prepare and submit to the Field Office for approval a time schedule, consistent with the deadline stated in the Program Reservation, of all actions to be taken during planning and construction of the project.

§ 841.115 Preliminary Loan.

(a) *Amount.* If a Program Reservation is issued, the Field Office may approve a preliminary loan to pay the cost of preliminary surveys and planning (including the cost of appraisals) necessary to prepare a Development Program. The maximum amount of the preliminary loan shall be \$500 per unit (\$1,000 per unit in Alaska); however, where the turnkey method is used, the amount approved should be substantially less. The Field Office shall review the PHA's explanation set forth in its Application of the need for these funds and shall approve a preliminary loan in the amount which the Field Office determines is a reasonable expenditure for the accomplishment of tasks that are clearly necessary to prepare the Development Program. Where the maximum amount of the preliminary loan is insufficient, the Field Office may request authorization from the Assistant Secretary for Housing-Federal Housing Commissioner to provide additional preliminary loan funds. Any such request shall be supported by full justification for the proposed expenditures.

(b) **Preliminary Loan Contract.** Where a preliminary loan is approved, the PHA and HUD shall execute a Preliminary Loan Contract and related documents in the form prescribed by HUD. Promptly after execution of the Preliminary Loan Contract, the PHA shall request Field Office approval for obtaining legal and architectural services where such services are necessary in connection with the project.

(c) **Repayment of Preliminary Loans.** The amount of preliminary loan funds advanced by HUD to the PHA are included in the development cost of a project and covered by the development loan funds under the ACC. In the event the project fails to reach ACC, the total amount of preliminary loan funds advanced to the PHA shall be repaid to HUD by the PHA from any funds or assets available for this purpose.

§ 841.116 Site approval.

(a) **Tentative Site Approval.** Each site shall comply with the criteria set forth in § 841.108. The PHA shall request tentative Field Office approval for each site by submitting a Preliminary Site Report on a form prescribed by HUD. The PHA may submit the Preliminary Site Report with the Application. Unless A-95 and Section 213 compliance was completed at the time of the Application, the Field Office shall obtain compliance by forwarding copies of the Preliminary Site Report in accordance with § 841.113(b) and Tentative Site Approval shall not be given until the response periods for A-95 and Section 213 have ended. Tentative site approval shall not be given unless HUD's environmental requirements have been met. The Field Office shall notify the PHA as soon as possible of tentative site approval or disapproval of the proposed sites or portions thereof. The notification shall specifically state any conditions to be met for final site approval. A notification of disapproval shall state the reasons for disapproval.

(b) **Final Site Approval.** To obtain final site approval, the PHA shall submit documentation that conditions, if any, of tentative site approval have been met, request a HUD appraisal and submit title information, site surveys and evidence of site control which are satisfactory to the Field Office. For acquisition projects under Subpart D of this part, the appraisal shall be of the "as is" value of the property. The Field Office shall not give final site approval or approve a Development Program until all of these requirements have been satisfied. Final site approval shall not constitute authorization to acquire a site or property.

(c) **Site Acquisition.** The PHA shall not acquire a site or make a commitment for acquisition until after execution of the ACC. Ownership of the site by the PHA or developer as required by the production method being used shall be accomplished prior to execution of the Construction Contract or Contract of Sale.

§ 841.117 Development Program.

(a) **Description.** A Development Program is a statement of the basic elements of a project, which is prepared by the PHA on a form and attachments prescribed by HUD and includes: (1) Cooperation Agreement, (2) Site documentation required by § 841.116(b), (3) Preliminary Plans and Specifications (or Work Write-ups for acquisition projects under Subpart D of this part), (4) Estimate of Total Development Cost, (5) Demonstration of Financial Feasibility and (6) Updating of Administrative Capability of the PHA. The Development Program shall be adopted by the PHA and submitted to the Field Office for approval.

(b) **Development Cost.** (1) The Total Development Cost is the sum of all HUD-approved costs for planning, site acquisition, administration, relocation, demolition, construction and equipment and their necessary financing (including interest and other carrying charges, if any) and in otherwise carrying out the development of the project. Development cost may include on-site streets and driveways, on-site utilities, non-dwelling facilities, a contingency allowance and insurance premiums for the first three years.

(2) For new construction projects, dwelling construction and equipment cost shall not exceed 110 percent of the appropriate prototype cost for the area published by HUD (Appendix A). The PHA may request a revision of the published prototype costs at the time of its Application or subsequently when the PHA believes that revision is necessary to permit development of the project. For acquisition projects under Subpart D of this part, the Total Development Cost shall not exceed 90 percent (or appropriately lower percentage if the acquired project has less than a 40-year useful life) of the imputed development cost of a comparable hypothetical newly constructed low-income housing project unless the PHA demonstrates that a higher amount is necessary for the acquisition and rehabilitation of properties in accordance with a locally established plan for neighborhood preservation and revitalization and such higher amount is approved by the Assistant Secretary for Housing.

(3) Where the PHA would be required to bear a part or all of the cost of off-site facilities if it were a private developer, the cost of such facilities may be included in the Total Development Cost: *Provided*, That the Field Office determines that the off-site facilities are a necessary appurtenance to the project and the amount included is limited to the lower of (i) the HUD approved estimate of the cost of such facilities or (ii) the enhancement in value of the project site attributable to such facilities. Where the cost of off-site facilities is required to be borne by the local government without cost to the project, whether because of normal practice or by virtue of the Cooperation Agreement, the

cost of such facilities may not be included in Total Development Cost, but the Field Office may arrange for a HUD loan evidenced by an Off-Site Facilities Note: *Provided*, That the Field Office determines that the off-site facilities are a necessary appurtenance to the project and the amount is limited to the lower of (a) the HUD approved estimate of the cost of such facilities or (b) the enhancement in value of the project site attributable to such facilities: *And provided*, That the PHA submits legally enforceable commitments, acceptable to HUD, to repay the cost of such facilities from sources other than annual contributions or project income.

(c) **Financial feasibility test and operating subsidies.** (1) The Development Program shall be approved only if the Field Office determines that the project is financially feasible based on the PHA's demonstration for the first five years of operation, in the form prescribed by HUD, that the project's estimated operating expenses do not exceed the estimated operating income for the five-year period without the use of operating subsidy.

(2) The estimate of operating income shall be the projected income for the five year period without use of operating subsidy based upon 95 percent occupancy by a tenant body selected in accordance with regulations (based on 24 CFR Part 860) which are designed to:

(i) Avoid concentration of the most economically and socially deprived families in the project;

(ii) Preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment;

(iii) Achieve a tenant body with a broad range of incomes and rent-paying ability which is generally representative of the range of incomes of low-income families in the PHA's area of operation as defined in state law; and

(iv) Achieve occupancy of at least 20 percent of the dwelling units by very low-income families.

Requirements or preferences for those living in the jurisdiction of the PHA at the time of application are permissible subject to the following: No requirement or preference may be based upon the identity or location of the housing which is occupied or proposed to be occupied by the applicant nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(3) The PHA shall be committed to selection of tenants, achievement and maintenance of project occupancy and operation of the project in accordance with the foregoing principles and as indicated by its demonstration of financial feasibility submitted to HUD. No request for operating subsidy based upon an operating deficit with respect to the proj-

ect for any of the first five fiscal years shall be considered by HUD unless the PHA clearly shows to the satisfaction of HUD that such operating deficit was due to changes in circumstances which (i) could not reasonably have been foreseen at the time of the demonstration of financial feasibility, (ii) were beyond the control of the PHA to prevent or mitigate, and (iii) were reported to HUD promptly at the time of their occurrence.

(4) At no time shall an operating subsidy be paid which together with the debt service annual contribution would exceed the Fair Market Rents for an equivalent number of similar housing units less the aggregate rents paid by the project tenants.

(d) *Annual Contributions Contract.*

(1) The ACC shall be based on the HUD-approved Development Program. Following execution of an ACC, no modifications may be made in a Development Program except in accordance with procedures prescribed by HUD.

(2) Under the ACC, HUD will provide development loan funds or security for the PHA to obtain such funds from sources other than HUD. This shall include an amount to cover the preliminary loan, if any. HUD may at any time require the PHA to obtain development loan funds from sources other than HUD secured by a pledge of HUD's agreement under the ACC to advance monies to the PHA or to make annual contributions payments. Annual contributions payable by HUD for debt service shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the PHA to finance the development or acquisition cost of the project. In no case shall such annual contributions be in funds from sources other than HUD secured by a pledge of HUD's agreement under the ACC to advance monies to the PHA or to make annual contributions payments. Annual contributions payable by HUD for debt service shall in no case exceed a sum equal to the annual amount of principal and interest payable on obligations issued by the PHA to finance the development or acquisition cost of the project. In no case shall such annual contributions be in excess of the maximum sum specified in the ACC, nor shall the number of annual contributions be greater than the number authorized by the ACC, nor shall the annual contributions be paid over a period in excess of forty years. Where the Field Office has determined that an acquisition project under Subpart D of this part has less than a forty year useful life, the term of the ACC and the number of payments shall be appropriately reduced.

(3) In the event that a project does not reach the point where annual contributions are payable by HUD, the amount of development loan funds advanced to the PHA by HUD or other sources shall be repaid by the PHA from any funds or assets available for this purpose.

§ 841.118 *Construction Requirements.*

(a) *Economy.* The PHA shall complete development of the project at the lowest

possible cost and in no event at a cost in excess of the Total Development Cost approved by HUD.

(b) *Changes in Contracts.* The PHA shall not order or agree to any changes in or additions to the work required under the Construction Contract or Contract of Sale except as authorized by the provisions of these contracts or with prior HUD approval.

(c) *Construction Inspections.* (1) Inspections during construction shall be the responsibility of the PHA and shall be performed by an architect or other qualified person pursuant to the HUD prescribed requirements for the production method involved. The PHA shall forward copies of all inspection reports to the Field Office with comments on actions taken to remedy deficiencies.

(2) Field Office representatives shall make on-site inspections as required by HUD. A copy of each inspection report shall be sent to the PHA with recommendations of actions to be taken by the PHA.

(d) *Final Inspection and Acceptance of Project.* (1) The contractor or developer shall notify the PHA in writing as to the date when the contract work, or stages when applicable, including agreed to off-site work, will be completed and ready for final inspection. If the PHA determines that the state of the work is as represented, the PHA shall promptly notify the Field Office. The final inspection shall be made jointly by the representatives of the PHA, the Field Office and the contractor or developer.

(2) If the inspection discloses no deficiencies other than punch list items or items awaiting seasonal opportunity to complete, the PHA shall submit for Field Office approval an Interim Certificate of Completion, which shall detail the items, and a proposed time schedule agreed to by the contractor or developer and the PHA for completion of the items. Upon Field Office approval, the PHA may release the monies to the contractor or developer less the withholdings required by the contract.

(3) The contractor or developer shall complete the punch list items and items awaiting seasonal opportunity in accordance with the HUD-approved time schedule for completion of the items. The contractor or developer will be paid for such items only after inspection and acceptance by the PHA and the Field Office; the PHA and Field Office shall not accept any items if there is a dispute as to whether such items have been completed. If the PHA is satisfied that the applicable requirements of the contract have been met, the PHA shall submit to the Field Office a Final Certificate of Completion and upon receiving Field Office approval shall release to the contractor or developer the amounts withheld with respect to such items in accordance with the applicable provisions of the contract.

(4) If portions of a project constituting completed units are accepted in stages, whether completed by one or more contractors or developers, such groups of units may be treated as units for which development has been completed for all purposes of the ACC.

(e) *Warranties.* The Construction Contract or Contract of Sale shall specify the warranty period applicable to all items of construction, including items covered by manufacturer's and supplier's warranties, and shall provide for assignment to the PHA of all manufacturer's and supplier's warranties. The PHA shall inspect each dwelling unit not less often than every three months during the contractor's or developer's warranty period or periods beginning three months after the date of the approved Interim Certificate of Completion, provided that there shall be a final inspection in time to exercise rights before expiration of these warranties. These inspections shall also cover all items under manufacturer's and supplier's warranties and, to the extent feasible, the PHA shall check the condition of items covered by these warranties so as not to lose any rights under them.

Subpart B—Turnkey Method—New Construction

§ 841.201 *Description.*

Under the Turnkey method, the PHA, following issuance of a Program Reservation, advertises for developers to submit proposals to provide a completed project, including site, as described in the PHA's Invitation for Proposals and the developer's packet. The PHA selects, subject to HUD approval, the best of the proposals received, taking into consideration site, price, design, the developer's experience and other evidence of ability to complete the project. After HUD approval of the proposal selected by the PHA, the working drawings and specifications are agreed to by the developer, the PHA and HUD, and the developer and the PHA enter into a Contract of Sale. The developer is fully responsible for all development and construction, including the provision of necessary financing. Upon completion of the project in accordance with the Contract of Sale, the PHA purchases the project from the developer.

§ 841.202 *Invitation for proposals.*

(a) *Preparation and Distribution.* The PHA shall prepare and submit to the Field Office the Invitation for Proposals and the developer's packet containing full project information and detailed minimum submission requirements which shall be in full compliance with the provisions of this part and as approved by HUD. Upon approval by the Field Office, the PHA shall publish the Invitation at least weekly for two consecutive weeks in a local newspaper of general circulation and shall also distribute, to the extent feasible, copies of the Invitation to the media, trade associations, local minority organizations and developers and builders. The PHA shall furnish a copy of the developer's packet to all parties indicating interest in responding to the Invitation. The Invitation shall specify a deadline by which proposals must be received by the PHA and a date, time and place for opening of proposals.

(b) *Preselected Sites.* The PHA may, if approved by the Field Office, preselect

a site. The PHA's request to preselect a site shall identify the site and shall include a justification stating the reasons why preselection is requested. Presetected sites must receive final site approval from the Field Office prior to publication of the Invitation for Proposals. If approved by the Field Office, the PHA's Invitation shall identify the preselected site and invite developers to submit proposals with regard to that site. The Invitation shall state that proposals involving other sites may also be submitted and that the fact that a site was preselected will not be taken into account in evaluating proposals.

§ 841.203 Opening of Proposals.

The PHA shall open all proposals received at the time and place specified in the Invitation; proposals received after the deadline shall be returned unopened. The PHA shall send copies of each opened proposal to the Field Office.

§ 841.204 Evaluation and Selection.

(a) *Evaluation.* The PHA shall evaluate each proposal on the basis of cost, site, design and amenities and experience of the developer and/or builder. The PHA shall select the lowest cost proposal, unless the PHA can justify another selection on the basis of specific points of superiority. The PHA shall tentatively select the best of the proposals received in response to the Invitation and submit to the Field Office its rationale for the tentative selection with a request for HUD approval.

(b) *Preliminary Site Report.* The PHA's submission of its tentative selection shall be accompanied by a Preliminary Site Report and request for an appraisal in accordance with § 841.116 for the site or sites in the tentatively selected proposal.

(c) *Field Office Review.* The Field Office shall review the PHA documentation and selection, process the Preliminary Site Report to final site approval, in accordance with § 841.116, and notify the PHA of approval or disapproval of the selection.

(d) *Selection.* (1) After obtaining HUD approval, the PHA shall notify the developer of the selection. This notification shall set a date by which either the preliminary plans and specifications or working drawings and specifications are to be submitted and shall advise that after HUD's receipt of these documents, HUD will set a date for a negotiation conference.

(2) The PHA shall prepare a statement setting forth the factors which contributed to the selection of the developer and make the statement available for public inspection.

§ 841.205 Negotiation Conference.

(a) *Negotiation.* On the basis of the preliminary plans and specifications or the working drawings and specifications and Field Office review of these documents, the parties shall negotiate the purchase price and other project re-

quirements necessary for the preparation of the Development Program.

(b) *Preliminary Contract of Sale.* At this conference the developer will advise the PHA whether he will want a Preliminary Contract of Sale before having the working drawings and specifications prepared. If so, the parties shall agree on a purchase price for the site and a price for the architectural and engineering services and, in such case, the negotiated price of the project shall be subject to reduction after completion of the working drawings and specifications.

§ 841.206 Development Program and ACC.

On the basis of the developer's proposal and any modifications as a result of the negotiations, the PHA shall prepare and submit to the Field Office the Development Program. The Field Office shall review the Development Program to assure that all requirements have been met and after approval of the Development Program, the Field Office shall prepare and process the documents required for execution of the ACC.

§ 841.207 Contract of Sale.

Following execution of the ACC, the parties shall execute the Contract of Sale on the HUD prescribed form if the developer previously submitted working drawings and specifications. If the Development Program included only preliminary plans and specifications, the PHA and the developer may execute a Preliminary Contract of Sale on the HUD prescribed form which states their mutual obligations during the period that the working drawings and specifications are being prepared and, upon HUD approval of the working drawings and specifications, the PHA and the developer shall execute the Contract of Sale.

§ 841.208 Construction requirements.

The requirements for changes in the Contract of Sale, inspections during construction, acceptance and warranties are stated in § 841.118. The PHA shall contract with an architect on the HUD prescribed form for the performance of inspection services during construction.

Subpart C—Conventional Method—New Construction

§ 841.301 Description.

The PHA shall use the turnkey method for new construction unless the PHA can demonstrate in its application and the Field Office determines that the conventional method will permit development of the project at direct and indirect costs, including consideration of total development cost and administrative costs of the PHA and HUD, that are less than would be required under the turnkey method. Under the conventional method, the PHA contracts with an architect to prepare plans and specifications for a proposed project on a site owned by the PHA. Following HUD approval of the plans and specifications, the PHA advertises for bids from contractors to

build the project and awards the Construction Contract to the lowest responsible bidder, subject to HUD approval. The contractor provides assurance in the form of 100 percent performance and payment bonds, or other security approved by HUD, such as a letter of credit or escrow. The contractor receives progress payments from the PHA during construction and a final payment upon completion in accordance with the Construction Contract.

§ 841.302 Site selection.

Following issuance of a Program Reservation, the PHA shall, if it has not already done so, select sites in accordance with the criteria stated in § 841.108 and shall request site approval in accordance with § 841.116. The PHA may option a site during this process.

§ 841.303 Development Program and ACC.

The PHA shall contract with an architect on the HUD prescribed form. The architect shall prepare schematic design plans and specifications in accordance with § 841.109 and as prescribed by the PHA. Based on these plans, the architect shall prepare a detailed estimate of project construction cost covering all work to be included in the construction contract. After review and approval by the Field Office of these plans and estimates, the PHA shall prepare and submit the Development Program as specified in § 841.117. The Field Office shall review the Development Program to assure that all requirements have been met. Upon approval of the Development Program, the Field Office shall prepare and process the documents required for execution of an ACC.

§ 841.304 Construction Contract and Bidding Documents.

Following execution of the ACC, the PHA and its architect shall prepare the construction and bid documents and submit them to the Field Office for approval. The Field Office shall determine that the bidding documents, the procedures for inviting bids, the proposed Construction Contract and attachments and all drawings and specifications are in compliance with HUD requirements. Following HUD approval, the PHA shall publish the advertisement for bids. A standard package of bid documents shall be issued to each prospective bidder.

§ 841.305 Award of Contract.

The PHA shall award the Construction Contract to the lowest responsible bidder after obtaining HUD approval of the proposed award. Following the receipt of Field Office approval, the PHA and contractor shall execute the Construction Contract and the PHA shall issue the Notice to Proceed directing the contractor to commence work.

§ 841.306 Construction requirements.

The requirements for changes in construction contracts, inspections during construction, acceptance and warranties are stated in § 841.118.

Subpart D—Acquisition Method

§ 841.401 Description.

Under the acquisition method, the PHA acquires an existing property which may need no rehabilitation or may require substantial rehabilitation to serve as low-income housing. A PHA may combine properties requiring substantial rehabilitation with properties requiring no rehabilitation in a single project.

§ 841.402 Property Selection.

(a) *Types of Property.* Structures of various types may be appropriate for use in an acquisition project, including non-housing structures which may be converted to housing use. Structures, other than those assisted under the Act, owned by a PHA, or city, county or state government, as well as HUD-owned, held or insured properties, are eligible for selection.

(b) *Other Considerations.* In addition to § 841.108, the PHA in its property selection shall consider:

(1) The design and quality of original construction as well as the degree, complexity and cost of rehabilitation necessary to place the property in acceptable physical condition, and

(2) The feasibility of relocating site occupants during and after rehabilitation, and availability of funds for this purpose, if applicable.

§ 841.403 Rehabilitation standards.

Projects shall be rehabilitated in compliance with § 841.109 and all acquired projects must comply with HUD regulations issued pursuant to the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4801).

§ 841.404 Turnkey procedures.

The PHA may invite proposals from developers who will provide the properties and perform the rehabilitation. The PHA may preselect a property in accordance with § 841.202(b). The procedures set forth in Subpart B of this part shall be followed.

§ 841.405 Conventional procedures.

The procedures set forth in Subpart C of this part shall be followed.

§ 841.406 Prequalified contractors.

Subject to Field Office approval, the PHA may develop a list of prequalified contractors or developers by advertising and giving an opportunity to all interested contractors or developers to submit information concerning their past experience and qualifications. Thereafter, the PHA may invite only prequalified contractors or developers to submit bids or proposals. The award shall be made to the lowest responsible prequalified contractor or the selection shall be made of the best proposal from a prequalified developer.

§ 841.407 Acquisition without rehabilitation.

If no rehabilitation work is required, the PHA shall select the property in accordance with the criteria set forth in §§ 841.108 and 841.402 and request site approval in accordance with § 841.116. Following final site approval and approval of the property, the PHA shall prepare and submit a Development Program (which shall include the cost of any minor repair or redecoration needed before occupancy) in accordance with § 841.117. Upon approval, the Field Office shall prepare and process the documents required for execution of the ACC. The Field Office shall arrange the closing at which the purchase of the property shall be accomplished.

§ 841.408 Force Account.

The force account method, whereby the PHA uses its existing staff or hires additional personnel to perform some or all of the work, may be used only in exceptional cases. Use of this method must be justified and the PHA must demonstrate in its Application that it has the capability to successfully implement this method. An exceptional case could be a project or unit of work of unusually small size, a project involving properties requiring only minor rehabilitation or a project involving individual small structures requiring major rehabilitation where it is necessary to utilize many separate sets of detailed plans and specifications or other contract documents and the work of preparing, advertising, awarding and administering such contracts would be disproportionately difficult, time-consuming and high in cost. Work under this method shall be subject to David-Bacon wage rates. The force account method may be combined with a conventional Construction Contract for other portions of the rehabilitation. The Field Office may specify special conditions or procedures designed to assure timely completion of the work within the approved development cost.

APPENDIX A—PROTOTYPE COST LIMITS FOR LOW-INCOME HOUSING

A. UNIT PROTOTYPE COST

1. Prototype cost comprises the cost of dwelling structures, account No. 1460, and dwelling equipment, account No. 1465, as described in "Low-Rent Housing Accounting Handbook 7510.1," chapter 3, section 15, which include their pro rata share of the builders' fee and overhead, insurance, social security, sales tax, and bonds.

2. Prototype cost does not include the costs of site acquisitions, site improvement, non-dwelling structures or spaces (and equipment), planning (architectural-engineering fees, permit fees, inspection, and similar costs), relocation, interest or local authority administrative costs, all of which are described in "Low-Rent Housing Accounting Handbook 7510.1," chapter 3, section 15.

3. Prototype cost takes into account compliance with applicable HUD Minimum Property Standards and planning and design criteria described in HUD Handbook 7410.1, chapter 3. Currently copies of HUD Handbooks are maintained and available for public inspection in the Office of Public Information, room 1104, Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410, and in each of the Department's regional, area and insuring offices.

4. Prototype cost takes into account:

(a) The extra durability and special features required for safety and security and economical maintenance of such housing.

(b) The provision of amenities designed to guarantee a safe and healthy family life and neighborhood environment.

(c) The application of good design as an essential component of such housing for safety and security as well as other purposes.

(d) The maintenance of quality in architecture to reflect the standards of neighborhood and community.

(e) The need for maximizing the conservation of energy for heating, lighting, and other purposes.

(f) The effectiveness of existing cost limits in the area, and

(g) The advice and recommendations of local housing producers.

B. PROJECT PROTOTYPE COSTS

1. The project prototype cost is the sum of the unit prototype costs for the dwellings of various sizes and types comprising the project. The total cost of dwelling construction and equipment (accounts 1460 and 1465), and the related proportionate share of the contingency established by any development cost budget shall not exceed the sum of 105 percent of the project prototype costs for the dwellings to be constructed.

2. A request for approval of a cost which exceeds the 105 percent cost limitation but which is not in excess of the statutory 110 percent may be submitted to the Regional Administrator. Such requests shall be supported by a detailed justification with respect to the particular project, taking into account all of the circumstances involved and demonstrating that such approval is necessary and desirable in carrying out the objectives of the Act.

3. If it is found at any time between annual updates that all or part of the current prototype cost for a field office jurisdiction are unworkable, the procedures outlined in HUD Handbooks 7410.1 and 7410.2 (1-74) will be followed for requesting revisions.

4. Development cost budgets, awards of main construction contracts, preliminary contracts of sale, and contracts of sale for turnkey projects will not be approved unless an appropriate prototype cost for the area is published in the FEDERAL REGISTER.

NOTE.—For FR page references to the list of Prototype Per Unit Cost Schedules issued under this Appendix but not carried in the Code of Federal Regulations, consult the List of CFR Sections affected.

Dated: November 12, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing,
Federal Housing Commissioner.

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