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REDLINE/STRIKEOUT DRAFT - JULY 11, 2000

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5~~, 903~~ and 982

[Docket No. FR-4427-F-02]

RIN: 2577-AB90

Section 8 Homeownership Program

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

ACTION: Final rule.

SUMMARY: This final rule implements the "homeownership option" authorized by section 8(y) of the United States Housing Act of 1937, as amended by section 555 of the Quality Housing and Work Responsibility Act of 1998. Under the section 8(y) homeownership option, a public housing agency may provide tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. This final rule follows publication of an April 30, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: **[Insert date 30 days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-0477. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1999 (64 FR 23488), HUD published a proposed rule for public comment to implement the "homeownership option" under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (referred to as the "1937 Act"), as amended by section 555 of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105-276, approved October 21, 1998; 112 Stat. 2461, 2518) (referred to as the "Public Housing Reform Act"). Section 8(y) authorizes Section 8 tenant-based assistance for an eligible family that occupies a home purchased and owned by members of the family.

The April 30, 1999 rule proposed to implement the section 8(y) homeownership option by adding a new "special housing type" under subpart M of HUD's regulations at 24 CFR part 982. The part 982 regulations, which were amended by final rule published on October 21, 1999 (64 FR 56894), implement the statutory merger of the Section 8 tenant-based certificate and voucher programs into a new Housing Choice Voucher program. Subpart M of 24 CFR part 982 describes program requirements for alternatives to the basic Section 8 Housing Choice Voucher program.

Homeownership assistance offers a new option for families that receive Section 8 tenant-based assistance. As with the other special housing types, HUD does not provide any additional or separate funding for homeownership assistance under section 8(y). In general, a public housing agency (PHA) that administers section 8 tenant-based assistance has the choice whether to offer homeownership assistance as an option for qualified applicants and participants in the PHA's Section 8 Housing Choice Voucher program. The PHA may choose to make homeownership assistance available for any qualified applicant or participant, or to restrict homeownership assistance to families or purposes defined by the PHA.

As required by law, the homeownership option is not available for units receiving section 8 project-based assistance. By law, homeownership under section 8(y) may only be provided for families receiving "tenant-based assistance" (42 U.S.C. 1437f(y)(1)). Integral to the tenant-based nature of the housing choice voucher program is the freedom-of-choice afforded to the participant family, regardless of whether the voucher is used for rental or homeownership assistance. A PHA may not reduce a family's choice by limiting the use of homeownership assistance to particular units, neighborhoods, developers, or lenders. For example, while HUD encourages PHAs to develop partnerships with lenders in order to assist the family in obtaining financing, the PHA may not require the family to use a certain lender or financing approach.

II. Summary of Changes Made by this Final Rule to the April 30, 1999 Proposed Rule

The following discussion summarizes the most significant differences between the April 30, 1999 proposed rule and this final rule. The changes made in response to public comment are discussed in greater detail in sections IV., V., and VI. of this preamble.

1. Revised definition of "net family assets" (§ 5.603(d)). In response to public comment, this final rule revises the definition of "net family assets" located in 24 CFR 5.603(d) to exclude the value of a home currently being purchased with Section 8 homeownership assistance. This exclusion is limited to the first 10 years after the purchase date of the home.

2. Use of the term "welfare assistance" rather than the term "public assistance" (§ 982.4(a)). The final rule replaces the proposed definition of the term "public assistance" with a cross-reference to the term "welfare assistance", which is defined at 24 CFR 5.603. The proposed definition of "public assistance" was redundant of HUD's existing definition of "welfare assistance." Further, the use of the term "welfare assistance" in this final rule will help to ensure the consistent use of defined terms throughout HUD's regulations.

3. Revised definition of the term "cooperative" (§ 982.4(b)). In response to public comment, the definition of the term "cooperative" in the final rule is no longer limited to housing owned by a nonprofit entity.

4. Revised definition of the term "first-time homeowner" (§ 982.4(b)).

The definition of "first-time homeowner" has been revised to clarify that any family who has owned any residential property during the preceding three years (regardless of whether its is the family's principal residence) does not meet the definition of a "first-time" homeowner. The final rule also clarifies that a single parent or displaced homemaker who, while married, owned a home with a spouse (or resided in a home owned by a spouse) is considered a "first-time homeowner" for purposes of the Section 8 homeownership option.

5. Overview of special housing types (§ 982.601). This final rule reorganizes and makes several clarifying changes to § 982.601, which provides an overview of the special housing types. For example, the changes clarify that the provisions of subpart M of 24 CFR part 982 apply solely to the specific special housing type noted in the heading of each regulatory section. Further, the revisions clarify that the PHA may not set aside program funds or program slots for special housing types or for a specific special housing type. These technical changes do not establish or modify existing program requirements, but are designed solely to make § 982.601 easier to understand.

6. PHA capacity to operate a successful Section 8 homeownership program ~~review financing~~ (§ 982.625(d)). This final rule adds a new § 982.625(d), which requires that a PHA wishing to provide Section 8 homeownership assistance must have the capacity to operate a successful homeownership program. The PHA has the required capacity if it either:

- Establishes a minimum homeowner downpayment requirement of at least 3 percent for participation in its Section 8 homeownership program, and requires that at least one percent of the minimum downpayment come from the family's personal resources;
- Requires that financing for purchase of a home under its Section 8 homeownership program be provided, insured, or guaranteed by the state or Federal government, comply with secondary mortgage market underwriting requirements, or comply with generally accepted private sector underwriting standards; or
- Otherwise demonstrates in its Annual Plan that its has the capacity,

or will acquire the capacity, to successfully operate a Section 8 homeownership program. ~~states that a PHA wishing to provide Section 8 homeownership assistance must demonstrate in its Annual Plan that the PHA has the capacity, or will acquire the capacity, to properly evaluate lender qualifications, loan terms, and other financing aspects associated with the homeownership option.~~ A PHA may acquire this capacity by either partnering with an entity experienced in reviewing homeownership financing or by hiring staff with such experience. ~~This final rule also makes a conforming amendment to HUD's PHA Plan regulations at 24 CFR part 903 to reflect the addition of new § 982.625(d).~~

7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and 982.628). For purposes of clarity, this final rule reorganizes the eligibility requirements for participation in the homeownership option located in ~~proposed~~ §§ 982.626 and 982.627 of the proposed rule). Section 982.626 of the final rule describes the initial requirements that must be satisfied before the commencement of homeownership assistance. Section 982.627 of the final rule sets forth the eligibility requirements (such as the minimum income and employment requirements) for a families wishing to participate in the homeownership option. Section 982.628 of the final rule describes the eligibility requirements for homes purchased with homeownership assistance. With the exception of those changes described elsewhere in this preamble, this reorganization is not substantive, but is intended to clarify these regulatory requirements. The substance of proposed § 982.628 and subsequent regulatory sections have been redesignated to conform to the establishment of new § 982.628 (for example, proposed § 982.628 has become § 982.629 of this final rule, proposed § 982.630 has become § 982.631, etc.).

8. Homeownership assistance as a reasonable accommodation (§ 982.627(b)(3)). This final rule revises § 982.627 to clarify that a family containing a family member with disabilities who requires homeownership assistance as a reasonable accommodation is eligible for the homeownership option, regardless of whether the family is a cooperative member or a first-

time homeowner (as those terms are defined at § 982.4).

9. Prohibition on the provision of homeownership assistance to family with present homeownership interest (§ 982.627(a)(6)). This final rule clarifies that, except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, no family member may have a present homeownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

10. Establishment of national minimum income requirement (§ 982.627(c)). At the request of several public commenters, the final rule establishes a national minimum income requirement that is equal to 2,000 hours of yearly full-time work at the Federal minimum wage.

11. Fulfilling the minimum income requirement (§ 982.627(c)(1)). In response to public comment, the final rule provides that the adult family members who will own the home at the commencement of the homeownership assistance (as opposed to only the head of household or spouse) must have qualified monthly income (gross income) that is not less than the minimum income requirement.

12. Fulfilling the employment requirement (§ 982.627(d)(1)). The final rule provides that one or more adult members of the family who will own the home at commencement of homeownership assistance (not just the head of household or spouse) may fulfill the employment requirement

13. Interruptions in employment (§ 982.627(d)(2)). The final rule provides that the PHA has the discretion to determine whether (and to what extent) a brief employment interruption is considered permissible in satisfying the employment requirement. The final rule also clarifies that the PHA may consider successive employment during the one-year period and self-employment in a business.

14. Eligible homes for purchase under the homeownership option (§ 982.628(a)(2)). The final rule provides that a home is eligible for purchase under the homeownership option if, at the time the PHA determines that the family is eligible to purchase the home with homeownership

assistance, the home is either under construction or already existing.

15. Provision of homeownership counseling (§ 982.630(b)). The final rule clarifies that, although the PHA must require pre-assistance homeownership counseling, the PHA is not itself obligated to provide the required counseling.

16. Housing counseling topics (§ 982.630(b)). The final rule clarifies that the PHA-required counseling program should "generally" cover the topics listed in § 982.629(b).

17. Fair housing as a suggested counseling topic (§ 982.630(b)(8)). The final rule expands the list of suggested housing counseling topics to include information on fair housing, fair housing lending practices, and local fair housing enforcement agencies.

18. RESPA and predatory lending as suggested counseling topics (§ 982.630(b)(9)). The final rule expands the list of suggested housing counseling topics to include information about the Real Estate Settlement Procedures Act (12 U.S.C.2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

19. Revision of housing counseling topics (§ 982.630(c)). The final rule provides that a PHA may revise the subjects covered in the pre-assistance counseling to address local circumstances and the needs of individual families.

20. Housing counseling standards (§ 982.630(d)). The final rule provides that, if the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

21. Seller certification in contract of sale that the seller is not debarred, suspended, or subject to a limited denial of participation (§ 982.631(c)(2)(v)). In response to public comment, the final rule provides

that the contract of sale must contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

22. Applicability of Federal Housing Administration (FHA) underwriting standards for non-FHA insured loans (§ 982.632). The final rule removes the requirement that purchases of homes financed without FHA mortgage insurance must, nonetheless, comply with the basic underwriting requirements for FHA-insured single family homes. However, the final rule continues to provide that if the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

23. PHA approval of refinancing agreements or securing of additional financing on the home (§ 982.632(c)). The final rule provides that the PHA may establish requirements or other restrictions concerning refinancing of debt incurred for the purchase of the home, or concerning financing for improvement or repair of the home.

24. PHA disapproval of lender qualifications and loan terms (§ 982.632(d)). This final rule clarifies that the PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or financing for improvements or repairs if the PHA determines that the debt is unaffordable, or if the PHA determines that the lender or the loan terms do not meet PHA qualifications.

25. Prohibition on homeownership interest in second residence (§ 982.633(b)(7)). This final rule clarifies that no family member may have a present homeownership interest in a second residence while receiving homeownership assistance.

26. Additional requirements for continuation of homeownership assistance (§ 982.633(b)(8)). The final rule provides that the additional requirements for continuation of homeownership assistance established by the PHA may include a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership

assistance. With regards to post-purchase counseling, PHAs are encouraged to at least provide the family written briefing materials covering the topics in the PHA-required housing counseling program at the time of any refinancing of the initial debt, or the financing for improvement or repair of the home.

27. Maximum term of homeownership assistance (§ 982.634). The final rule provides for a mandatory term limit on homeownership assistance of 15 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer. In all other cases, the maximum term of homeownership assistance is 10 years. The PHA may not establish shorter or longer maximum terms.

28. Applicability of maximum term for homeownership assistance (§ 982.634). The final rule clarifies that the maximum term for homeownership assistance applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is the spouse of any member of the household who has an ownership interest in the unit at the time homeownership payments are made.

As in the proposed rule, the final rule provides that the maximum term for homeownership assistance does not apply to an elderly family or a disabled family. The final rule clarifies that, in the case of an elderly family, this exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. In the case of a disabled family, this exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

29. Inclusion of accessibility modifications as homeownership expenses (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the

family is a person with disabilities, eligible homeownership expenses may include debt incurred to finance costs needed to make the home accessible for the family member, if the PHA determines that the allowance is needed as a reasonable accommodation.

30. Inclusion of condominium or cooperative operating charges or maintenance fees as homeownership expenses (§ 982.635(c)(4)). The final rule provides that, if the home is a cooperative or condominium unit, homeownership expenses may include cooperative or condominium operating charges or maintenance fees assessed by the condominium or cooperative homeowner association.

31. Homeownership assistance payments to lender or family (§ 982.635(d)(2)). The final rule clarifies that, if the PHA decides to make the homeownership assistance payments directly to the lender, and the assistance payment exceeds the amount due to the lender, the PHA must pay the excess amount directly to the family.

32. Automatic termination of homeownership assistance (§ 982.635(e)). The final rule clarifies that homeownership assistance for a family terminates automatically 180 calendar days after the last housing assistance payment on behalf of the family. However, a PHA has the discretion to grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

33. Clarification of portability procedures (§ 982.636). This final rule clarifies the portability procedures for Section 8 homeownership assistance. Generally, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families. In general, the portability procedures for the Housing Choice Voucher program (described in §§ 982.353 and 982.355) apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except to the extent that an administrative function (e.g., issuance

of a voucher or execution of a tenancy addendum) is not applicable to the homeownership option.

34. Prohibition on provision of continued assistance to family with interest in prior home (§ 982.637(a)(2)). The final rule provides that a PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

35. Denial or termination of homeownership assistance (§ 982.638). For purposes of clarity, the final rule consolidates the provisions regarding the denial and termination of homeownership assistance in a new § 982.638.

36. Continued assistance after mortgage defaults (§ 982.638(d)). This final rule clarifies the regulatory provisions regarding continued assistance to a family that has defaulted on a mortgage obtained through the homeownership option. The final rule provides that the PHA must terminate voucher homeownership assistance for any member of a family that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt. However, the family may be eligible to receive continued voucher rental assistance. The PHA may consider mitigating circumstances in determining whether to provide a family with rental assistance after a mortgage default.

37. Recapture of homeownership assistance (§ 982.640). In response to public comment, the final rule provides for the recapture of a percentage of homeownership assistance provided to the family upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a "cash-out" of the refinanced debt) are subject to the new recapture provision.

The final rule requires that, upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage. The amount of homeownership assistance subject to recapture shall automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. At the end of the 10 year period, the amount of the homeownership assistance subject to recapture will be zero.

~~37. Automatic termination of homeownership assistance (§ 982.641). This final rule clarifies that the provisions of § 982.455, which provide for the automatic termination of tenant-based rental assistance 180 calendar days after the last housing assistance payment is made on behalf of the family, also apply to Section 8 homeownership assistance. A PHA may request regulatory relief from HUD in those cases where automatic termination would result in extreme hardship for the family.~~

III. Overview of the Section 8 Homeownership Program

An overview of how the Section 8 homeownership program works follows. The details regarding the operation of the Section 8 homeownership option are provided elsewhere in the preamble and the regulatory text.

PHA administration of the Section 8 homeownership program differs from the tenant-based rental program in many ways. A PHA may use the certificate and voucher program funding already under Annual Contributions Contract (ACC) or new tenant-based Section 8 funding for rental or homeownership purposes. The PHA may opt to limit the number of Section 8 homeownership vouchers or not implement the homeownership option. There is no separate or additional funding for the homeownership program.

Generally, a PHA that administers Section 8 tenant-based assistance has the choice whether to offer the homeownership option. However, a PHA that elects to provide homeownership assistance must have the capacity to operate a successful Section 8 homeownership program. The PHA has the required capacity if it:

• Establishes a minimum homeowner downpayment requirement of at least 3 percent for participation in its Section 8 homeownership program, and requires that at least one percent of the minimum downpayment come from the family's personal resources;

• Requires that financing for purchase of a home under its Section 8 homeownership program be provided, insured, or guaranteed by the state or Federal government, comply with secondary mortgage market underwriting requirements, or comply with generally accepted private sector underwriting standards; or

• Otherwise demonstrates in its Annual Plan that its has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program.

At the briefing of families selected to participate in the tenant-based Section 8 program, the PHA must discuss any homeownership option. Family participation in the homeownership program is voluntary. Although the homeownership program is open to both Section 8 applicants and participants, not every Section 8 tenant-based family may receive homeownership assistance. The PHA may limit the number of homeownership families and there are statutory family eligibility requirements such as a minimum level of non-welfare income and a history of full-time employment. (The employment history requirement is not applicable to elderly and disabled families, and there is a modified income requirement for elderly and disabled families.) The program is generally limited to first-time homeowners. The PHA may add other local eligibility requirements such as participation in the FSS program.

Once a family has been determined by the PHA to be eligible for Section 8 homeownership assistance, the family must attend homeownership counseling sessions. The counseling may be done by PHA staff or another entity such as a HUD-approved housing counseling agency. However, if the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

The PHA must advise the family of any deadlines on locating a home, securing financing, and purchasing the home. In establishing such time limits, the PHA should ensure that a family who has executed a sales contract is provided reasonable time to close on the purchase of the home. The PHA does not issue a certificate or voucher to the family. If the family is unable to locate a home to purchase within the PHA established deadlines, the PHA may issue the family a rental certificate or voucher.

A home may be purchased under the homeownership option if, at the time the PHA determines that the family is eligible to purchase the home with homeownership assistance, the home is either under construction or already existing. Generally, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families. In general, the portability procedures for the Housing Choice Voucher program (described in §§ 982.353 and 982.355) apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except to the extent that an administrative function (e.g., issuance of a voucher or execution of a tenancy addendum) is not applicable to the homeownership option.

The home chosen by the family must pass an initial PHA Housing Quality Standards (HQS) inspection. (The HQS used for the Section 8 rental program is applicable to the homeownership program.) In addition, the family must hire an independent, professional home inspector to inspect the home selected by the family to identify physical defects and the condition of the major building systems and components. A copy of the independent inspection report must be given to the PHA. The family and the PHA must determine if any prepurchase repairs are necessary.

The family will enter into a contract of sale with the seller. The family must secure their own financing for the home purchase. There is no prohibition against using local or State Community Development Block Grant (CDBG) or other subsidized financing in conjunction with the Section 8 homeownership program. The PHA may prohibit certain forms of financing, require a minimum cash downpayment, or determine that the family cannot afford the proposed financing. (There are no Section 8 funds for home purchase financing. Instead, the Section 8 housing assistance will be provided monthly to help the family meet homeownership expenses.)

It is anticipated that mortgage lenders will consider the Section 8 assistance when underwriting the loan. If purchase of the home is financed with FHA-insured mortgage financing, such financing is subject to FHA mortgage insurance credit underwriting requirements. Otherwise, the underwriting standards of the individual lender and/or financing program will apply in cases where financing for purchase of the home is not FHA-insured.

Homeownership housing assistance payments may be made directly to the family or to lender on behalf of the family. (Two-party checks to the family and lender are not authorized because such a practice is incompatible with typical lending documents and practices.) Before the housing assistance begins, the family and the PHA must execute a "statement of homeowner obligations." The Section 8 tenant-based housing assistance payments (HAP) contract, request for lease approval and lease addendum are not applicable to the Section 8 homeownership program.

The amount of the housing assistance payment will be calculated using a modified voucher program payment standard approach. The homeownership housing assistance payment will equal the lower of (1) the payment standard minus the total tenant payment or (2) the monthly homeownership expenses minus the total tenant payment. The family is responsible for the monthly homeownership expenses not reimbursed by the housing assistance payment. (Total tenant payment is higher of the minimum rent, 10 percent of monthly income, 30 percent of monthly adjusted income, or the welfare rent.) There is no shopping incentive in the homeownership option. The PHA must use the utility allowance schedule and payment standard schedules applicable to the Section 8 voucher rental program.

After the homeownership housing assistance payments begin, the PHA will annually reexamine family income and composition and make appropriate adjustments to the amount of the monthly housing assistance payment. There is no requirement for the PHA to conduct an annual HQS inspection.

Except for elderly and disabled families, Section 8 homeownership assistance may only be paid for a maximum period of 15 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer. In all other cases, the maximum term of homeownership assistance is 10 years. The PHA may not establish shorter or longer maximum terms. The maximum term for homeownership assistance applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is the spouse of any member of the household who has an ownership interest in the unit at the time homeownership payments are made.

The maximum term for homeownership assistance does not apply to an elderly family or a disabled family. In the case of an elderly family, this exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. In the case of a disabled family, this exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family. If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive Section 8 homeownership assistance).

PHAs shall recapture a percentage of homeownership assistance defined in the regulations upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a "cash-out" of the refinanced debt) are subject to the program recapture provision.

A PHA opting to administer the Section 8 homeownership program must establish local homeownership policies. The following policies must be described in the PHA administrative plan: any additional PHA requirements for participation in its Section homeownership program (§ 982.626(b)); PHA maximum times to locate and purchase a home (§ 982.629(a)); PHA policy about issuing the family a rental voucher if the family does not find a suitable house to buy (§§ 982.629(c)); any minimum cash downpayment or equity requirements (§ 982.632); any requirements for financing purchase of a home, including requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), terms of financing (for example, a prohibition of balloon payment mortgages and establishment of a minimum homeowner equity requirement), and financing affordability (§ 982.632); PHA policy for payment of the HAP to the family or lender (§ 982.635(d)); and any PHA requirements for continuation of homeownership assistance (§ 982.633(b)(8)).

IV. Public Comments Received on the April 30, 1999 Proposed Rule

The public comment period on the April 30, 1999 proposed rule closed on June 29, 1999. HUD received 93 public comments. Comments were submitted by PHAs, including regional and State housing agencies; national organizations representing PHAs; legal services organizations; mortgage bankers; Fannie Mae and Freddie Mac; advocates for persons with disabilities; low-income housing advocates; and various other organizations and individuals. The following sections of this preamble present a summary of the significant issues raised by the public commenters on the April 30, 1999 proposed rule, and HUD's responses to these comments.

Section V. of the preamble discusses general comments that did not address a specific regulatory section. Section VI. of the preamble discusses those comments that concerned a specific regulatory provision of the proposed rule.

V. Discussion of General Comments Not Regarding a Specific Regulatory Section

A. Support for Proposed Rule

Comment: Support for proposed rule. Several commenters expressed support for the proposed rule and the concept of the Section 8 homeownership option. One commenter wrote: "In general, [our PHA] commends the job that HUD has done in this component of the immense regulatory undertaking required by the [Public Housing Reform Act]." Another commenter wrote that its board "unanimously endorsed the concept of the Section 8 homeownership program, and applauds HUD for taking this initiative." Still another commenter wrote: "[We] applaud the proposed Section 8 Homeownership Program."

HUD Response. HUD is appreciative of the comments in support of HUD's efforts in developing the proposed rule. HUD believes that the Section 8 homeownership option will provide local PHAs with greater flexibility in addressing the housing needs of their communities while creating homeownership opportunities for the low-income families the Section 8 tenant-based program is designed to serve.

B. General Concerns About the Proposed Rule

Comment: HUD should prohibit or limit the use Section 8 rental assistance funds for homeownership. Several commenters were opposed to the concept of Section 8 homeownership. These commenters wrote that limited Section 8 resources should be used solely to assist families in renting decent, safe, and sanitary units. One of the commenters wrote that many communities currently offer other programs with Community Development Block Grant (CDBG), HOME, or state or local funding to assist prospective first-time homebuyers. Several of the commenters suggested that HUD should establish reasonable upper limits on the number or percentage of households that can use the homeownership option, in order to protect the availability of rental assistance for extremely low-income families. According to these commenters, the homeownership option is geared toward families with relatively higher incomes than the typical Section 8 rental program participant.

HUD response. Section 8(y) provides that a PHA, in its discretion, may make Section 8 homeownership assistance available to eligible families. HUD anticipates that PHAs will consider local circumstances (such as the availability of other local resources) when deciding whether or not to implement a homeownership program.

HUD does not believe it is necessary to establish upper limits on the number of families a PHA may allow to participate in the homeownership option in order to protect the interests of extremely low-income families. Since the same income targeting requirements apply to the rental and homeownership components of the Section 8 Housing Choice Voucher program, implementation of the homeownership option should not have a significant effect on the availability of Section 8 voucher assistance to extremely low-income applicants.

Comment: The lack of uniformity in program rules for PHAs will discourage lender participation and impede family choice and economic mobility. Several commenters wrote that the proposed rule grants too much discretion to PHAs to establish certain critical elements of the homeownership program. These areas include minimum income requirements, program eligibility requirements, financing requirements, and the duration of homeownership assistance. The commenters wrote that, as a result of the lack of uniform rules, there will be considerable disparity from one jurisdiction to another unless HUD imposes uniform rules. The commenters wrote that such disparities would discourage lender participation and prevent regional efforts to expand homeownership opportunities. Without broad lender participation, families would be deprived of the protections offered by a competitive marketplace and would be vulnerable to fraudulent real estate and financing practices.

HUD response. The final rule continues to provide PHAs with broad administrative flexibility over the homeownership option. Where HUD has determined that uniformity is appropriate (such as in the areas of minimum income and maximum term of assistance), this final rule establishes uniform Federal standards. However, HUD continues to believe that administrative flexibility is essential for the program to address local needs, adapt to local markets, and permit localized financing strategies in order to achieve success in individual communities. The approach of the final rule is consistent with two of the purposes of the Public Housing Reform Act: to deregulate PHAs, and to provide more flexible use of Federal assistance to PHAs (see section 505(b) of the Public Housing Reform Act).

While standardized requirements may facilitate participation by certain regional and national financing entities, and increase opportunities for sales of mortgages in the secondary market, HUD believes that PHA flexibility over certain features of the program will not preclude that result. For instance, a regional lending institution could establish its own requirements to participate in the section 8(y) program. PHAs could then choose to structure their programs accordingly in order to comply with and complement the lender's requirements for participation.

C. Comments Regarding Persons with Disabilities

Comment: Support for rule provisions regarding the elderly and persons with disabilities. A number of commenters commended HUD for the sensitivity shown in the proposed rule to persons with disabilities' real life situations, especially in the areas of income and employment. These commenters wrote that the proposed rule demonstrated that HUD is attuned to disability issues and that a conscious effort was made to recognize those barriers faced in accessible housing.

HUD response. HUD appreciates the comments supporting the proposed rule provisions concerning the elderly and persons with disabilities.

Comment: The rule should require the PHA or a local supportive service provider to annually review difficulties faced by persons with disabilities in maintaining their mortgage payments or homes. The commenter submitting this suggestion wrote that an annual review is necessary to ensure that: (1) homeowners with disabilities continue to be able to access the supportive services they choose; and (2) supportive service agencies and the PHA are aware of any problems the family may be having.

HUD Response: The final rule provides that PHAs may offer post-purchase counseling, and HUD encourages the use of such counseling to further lessen the risk of defaults. However, it would be inappropriate to limit post-purchase counseling to persons with disabilities, and HUD believes it would be inappropriate to presume that persons with disabilities require additional scrutiny because they are more likely to default on their mortgages. Accordingly, HUD has not adopted the suggestion made by the commenter.

Comment: The rule should define what constitutes a "reasonable accommodation" for a person with disabilities. Several commenters wrote that the proposed rule would require a PHA to offer Section 8 homeownership assistance "if needed as a reasonable accommodation for a family member who is a person with disabilities" (64 FR 23488). These commenters suggested that the final rule should establish guidelines to determine when homeownership assistance is a "reasonable accommodation." The commenters wrote that, without such guidance in the final rule, PHAs that choose not to provide a homeownership option may fail to provide the required "reasonable accommodation" to persons with disabilities.

Other commenters, however, wrote that PHAs should not be required to offer homeownership assistance as a reasonable accommodation. The commenters wrote that this obligation could be costly to a PHA that has not elected to offer the homeownership option and has not assembled the counseling and other resources needed to operate it.

HUD response. The provision of homeownership assistance as a reasonable accommodation is determined on a case-by-case basis by the PHA. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. For example, depending on the individual circumstances, the PHA may determine that it is a reasonable accommodation to provide homeownership assistance when the PHA has implemented a limited homeownership program and currently assisting the maximum number of homeowners in the PHA program. On the other hand, the PHA may determine that it is not reasonable to provide homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

Comment: All homeownership briefing materials should be accessible to persons with disabilities. Several commenters suggested that HUD should ensure that all homeownership programs and briefing materials are accessible to person with all types of disabilities.

HUD response. The Section 8 homeownership program is a "special housing type" under subpart M of the tenant-based Section 8 program regulations. Except when specifically modified by subpart M, requirements in the other subparts of the tenant-based regulations apply to the special housing types (including the homeownership program). Accordingly, as specified in § 982.301, the PHA, in briefing a family that includes any person with disabilities, must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6.

D. Comments Regarding the Role of Nonprofits

Comment: The final rule should encourage PHAs to contract with nonprofit organizations to administer the homeownership assistance. A number of commenters wrote that PHAs have had little experience in operating homeownership programs, whereas nonprofits have a solid-track record in this area. These commenters wrote that PHA partnerships with nonprofits may prove particularly helpful in preventing fraud and other abusive practices. In addition, the commenters wrote that nonprofits' knowledge of the market can help ensure that families are exposed to housing choices in a range of neighborhoods. The commenters wrote that there is much to be gained by requiring, or at least strongly encouraging, PHAs to partner with nonprofits in the design and operation of Section 8 homeownership programs.

HUD response. While the final rule does not require the PHA to partner with a nonprofit, the PHA may wish to consider subcontracting with nonprofits for administration of one or more of the responsibilities under the homeownership program, just as it may contract out other PHA functions in administering the Section 8 Housing Choice Voucher program. Alternatively, the PHA may wish to consult with nonprofit organizations with homeownership experience in designing the PHA's homeownership program. HUD encourages PHAs lacking in homeownership program experience to explore the possibility of working with experienced nonprofits through partnerships or contractual arrangements to design and administer a successful section 8(y) program. Regardless of the PHA approach to the delivery of PHA responsibilities, the PHA is always responsible for overall compliance with program requirements.

Comment: Where there is no PHA willing to implement the homeownership option in a particular area, HUD should permit other public agencies or private nonprofits to administer a Section 8 homeownership program. Several commenters wrote that this approach would expand homeownership opportunities for persons with disabilities, even in those cases where a PHA chooses not to provide the homeownership option or where there is no tenant-based program at all (perhaps an area where there is little or no rental housing, but an abundance of low-cost single-family homes).

HUD response. Section 8(o)(15) of the 1937 Act specifically provides that a PHA providing tenant-based assistance "may at the option of the agency, provide assistance for homeownership" and that a PHA "may contract with a nonprofit organization to administer a homeownership program." The decision to offer homeownership assistance rests with the PHA and there is no additional or separate funding provided for homeownership assistance. A PHA that does not want to use existing staff to implement a homeownership program may consider subcontracting with a nonprofit organization to administer the homeownership program on behalf of the PHA, but is not required to do so.

E. Comments Regarding Income Targeting

Comment: The final rule should clarify whether Section 8 homeownership subsidies are subject to the same income targeting requirements as the Section 8 rental assistance program. A few commenters wrote that if the new income targeting requirements of the Public Housing Reform Act apply, the requirements will reduce the pool of families eligible for Section 8 homeownership assistance.

HUD response. The Section 8 homeownership program is a "special housing type" under subpart M of the tenant-based Section 8 program regulations. Except when specifically modified by subpart M, requirements in the other subparts of the tenant-based regulations apply to the special housing types (including the homeownership program). The income targeting requirements apply to the PHA's entire tenant-based Section 8 program, including the rental and any homeownership portion of the program.

HUD anticipates that most participants in the Section 8 homeownership program will be current program participants, not applicants. Since families continuing to receive assistance under the 1937 Act are not considered as new admissions, their income levels are not examined for compliance with income targeting requirements.

F. Comments Regarding the Relationship Between the Homeownership Option and the Family Self-Sufficiency (FSS) Program

Comment: Linking the FSS Program to Homeownership Option. One commenter expressed the opinion that it is very important to retain PHA discretion regarding whether to link the Section 8 homeownership program to FSS. Several commenters wrote that families should not be required to participate in the FSS program as a condition of receiving homeownership assistance.

HUD response. There is no federal requirement that families must participate in the FSS program as a condition of receiving homeownership assistance. There is, however, PHA administrative flexibility to link the FSS and homeownership programs. For example, the PHA may adopt local homeownership eligibility requirements such as participation in the FSS program. The PHA may opt to incorporate the homeownership goal in the family's FSS contract of participation so any FSS escrow could be advanced for purchase of a home or home maintenance/improvement purposes. HUD believes that PHA discretion over this issue is appropriate and in keeping with the intention to ensure there is sufficient PHA flexibility to address the local community's needs and objectives in the administrative policies of the program.

G. Considering Section 8 Assistance as Income for Purposes of Financing Purchase of Home

Comment: Section 8 assistance should not be considered income for purposes of financing the purchase of the home. Several commenters wrote that the proposed rule did not adequately consider the high cost of housing in certain metropolitan areas. The commenters wrote that the preamble to the proposed rule states that "it is anticipated that mortgage lenders will consider the Section 8 assistance as a source of income when underwriting the loan" (64 FR 23488, 23489). Instead, the commenters suggested that the final rule should require that the voucher housing assistance payment be deducted from the monthly housing expense. The commenters wrote that, due to the high cost of housing in certain metropolitan areas, the housing assistance payment will not raise income sufficiently to permit the family to qualify for a loan in an amount necessary to purchase a good quality home.

One of the commenters wrote that lenders should not consider Section 8 assistance as a source of income because payments are not earned income or entitlement income, are not guaranteed for more than 12 months, and may decrease with an increase in total family income or violation of Section 8 program requirements.

Another commenter recommended that the final rule prohibit discrimination based on source of income because lending institutions do not view government benefits as a reliable or stable source of income. Accordingly, these lenders will be unlikely to approve home loan applications from Section 8 recipients.

HUD response. Section 8(y) does not regulate the lending industry. Consequently, the final rule does not impose any requirement on lenders to treat the subsidy in a certain manner, nor does the rule prohibit discrimination by lenders based on source of income. Lenders will apply their underwriting criteria for financing of homes to be purchased under the Section 8 homeownership program. HUD notes that, to the extent applicable, lenders must comply with the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.) (referred to as "ECOA") and the implementing regulations issued by the Federal Reserve Board at 12 CFR part 202. ECOA prohibits lending discrimination, including discrimination based on receipt of public assistance.

H. Comments Regarding Mortgage Defaults

Comment: HUD should require that each PHA with a homeownership program develop a strategy to reduce foreclosure risk. Two commenters wrote that such a requirement would help minimize foreclosures among participating families.

HUD response. Although HUD has not adopted the suggestion, the final rule does provide that a family must attend and satisfactorily complete pre-assistance homeownership counseling before homeownership assistance may commence. In addition, HUD encourages PHAs to provide post-purchase counseling and otherwise develop local strategies to reduce mortgage foreclosures by families participating in the homeownership program.

I. Other General Comments

Comment: The final rule should explicitly permit PHAs to limit homeownership assistance to local needs. The preamble to the April 30, 1999 proposed rule provided that:

> The PHA may choose to make homeownership assistance freely available for any qualified applicant or participant, or to restrict homeownership assistance to families or purposes defined by the agency. (64 FR 23488)

One commenter wrote that the proposed regulatory text does not contain comparable language. The commenter wrote that a PHA should have the discretion to limit application of its Section 8 homeownership program, in whole or in part, to achieve local housing goals or priorities. Accordingly, the commenter suggested that the final rule contain regulatory text equivalent to the quoted preamble language.

HUD response. The final rule explicitly provides at §982.626(d) that the PHA may limit homeownership assistance to families or purposes defined by the PHA.

Comment: HUD should explicitly authorize and encourage PHAs to join together to administer the homeownership option. Several commenters wrote that lenders are much more likely to participate in a regional program than in a program whose rules vary from PHA to PHA. The commenters wrote that a regional program would facilitate mobility and minimize portability concerns.

HUD response. PHAs currently have necessary flexibility to join in the regional administration of the homeownership option. Explicit authorization is not necessary for PHAs to jointly administer (or otherwise cooperate in the administration) of the Section 8 homeownership program.

Comment: PHAs should be required to provide homeownership option. A few commenters suggested that PHAs should be required to offer Section 8 homeownership assistance. The commenters wrote that HUD should exempt a PHA from offering homeownership assistance only if the PHA can document that implementing the homeownership option in its jurisdiction would not be feasible.

HUD response. The recommendation made by the commenters is inconsistent with the 1937 Act. Section 8(o)(15) of the 1937 Act specifically provides that a PHA providing tenant-based Section 8 assistance "may at the option of the agency, provide assistance for homeownership." Accordingly, HUD has not adopted the suggestion made by the commenters.

Comment: HUD should isolate Section 8 homeownership loans from other FHA loans. One commenter wrote that loans under the Section 8 homeownership program will likely have higher default ratios than other loans, and that lenders originating these loans would be penalized when their default numbers are higher than those of their peers who have not participated in the program.

Specifically, the commenter wrote that lenders participating in the Section 8 homeownership program might unfairly lose their FHA approved lender status. Therefore, the commenter suggested that HUD's tracking systems should isolate loans issued under the Section 8 homeownership program from other FHA loans.

HUD response. Lenders will use normal FHA underwriting criteria for FHA-insured loans. As a result, HUD does not anticipate a higher than average default rate and HUD does not intend to track these loans separately.

J. General Questions About the Proposed Rule

Comment: Is a PHA an eligible seller under the homeownership program?

HUD response. There is no prohibition against a family purchasing a PHA-owned home under the Section 8 homeownership program. However, the PHA cannot steer families (or otherwise limit or restrict purchase options) to PHA-owned or controlled units.

Comment: Is a manufactured home eligible for purchase under the homeownership program?

HUD response. A manufactured home and the real property upon which the manufactured home sits are eligible for purchase under the homeownership program.

Comment: At annual reexaminations of family income subsequent to home purchase, will the owned home be counted as an asset? One commenter wrote that this could become a serious problem if there is rapid appreciation of the value of the home.

HUD response. In response to this comment, HUD has revised the definition of "net family assets" found in 24 CFR 5.603(d). The revised definition excludes the value of a home currently being purchased with Section 8 homeownership assistance. This exclusion is limited to the first 10 years after the purchase date of the home.

Comment: Is the initial 40 percent maximum rent burden requirement under the Housing Choice Voucher program applicable to the homeownership option? The commenter wrote that this provision, if applied to the homeownership program, would severely limit housing choice.

HUD response. The 40 percent initial rent burden cap does not apply to families who will participate in the Section 8 homeownership program since homeownership families do not pay rent.

Comment: If the lender is relying on the Section 8 assistance to secure the mortgage, is the family, the PHA or HUD is responsible for payment of the note?

HUD response. Neither the PHA nor HUD is guarantor of mortgage note for a home being purchased under the Section 8 program. The terms of the loan note will determine who is responsible for payment (usually the family) of the loan.

VI. Discussion of Comments Regarding a Specific Regulatory Section

For the convenience of readers, the discussion that follows is organized by the regulatory section of the proposed rule it pertains to (e.g., § 982.625, § 982.633, etc.).

A. Definitions (§ 982.4)

Comment: Definition of "Public Assistance" is too broad. Several commenters wrote that the proposed definition of "public assistance" is overly broad and subject to misinterpretation. The commenters suggested that the definition should be narrowed to specifically identify only those welfare programs that may not be counted in determining minimum income. Other commenters wrote that the definition should exclude food stamps, unemployment insurance and permanent disability payments.

HUD Response. The final rule addresses the concerns raised by the commenters regarding the clarity of the definition of "public assistance." Specifically, HUD has removed the definition of the term "public assistance" and adopted, in its place, the definition of the term "welfare assistance" located in 24 CFR 5.603. The definition of "welfare assistance" is well-established and understood by PHAs. Further, the use of the term "welfare assistance" in this final rule will help to ensure the consistent use of defined terms throughout HUD's regulations.

Comment: The definition of "cooperative" should not be limited to "housing owned by a nonprofit corporation or association." One commenter wrote that many housing cooperatives are incorporated under their home state's business corporation act. The commenter suggested that by dropping the word "nonprofit," the definition would better reflect the reality of diverse legal practices among states. Another commenter wrote that the proposed definition is unnecessarily intrusive, imposes unnecessary administrative functions, and unduly hinders the use of cooperative housing.

HUD Response. Consistent with the recommendation, the regulatory definition of "cooperative" in the final rule is no longer limited to housing owned by a nonprofit entity.

B. Lease-purchase arrangements (§ 982.305 and 982.317)

Comment: HUD should develop a model lease-purchase agreement to prevent fraud by seller. The commenter wrote that a standard lease-purchase agreement would prevent seller fraud.

HUD response. HUD does not intend to provide or require the use of a standard HUD-prescribed lease-purchase agreement for the Housing Choice Voucher program. HUD believes broad flexibility is needed in this area to reflect the wide range of acceptable real estate market practices that differ among localities.

Comment: Applicability of homeownership requirements upon entering lease-purchase agreement. Two commenters suggested that a lease-purchase family should be required to comply with all homeownership requirements before purchase of the home. Another commenter wrote that PHAs should be provided with the option of requiring compliance with the homeownership requirements at the start of the lease-purchase arrangement.

One commenter wrote that Section 8 families opting for homeownership through a lease-purchase arrangement should be required to satisfy at least half the continuous employment and half the required counseling requirements at the time they enter the lease-purchase program. The commenter wrote that, since lease-purchase families typically have credit-history problems to clear up over time, it would be onerous to impose all of the homeownership requirements on the family at the time of their entrance into the program.

Other commenters wrote that a lease-purchase family should be subject to the independent professional home inspection requirements of the homeownership program before entering into a lease-purchase arrangement. These commenters wrote that it would be devastating to a lease-purchase family to reach the purchase option stage only to discover that the purchase is jeopardized due to a property defect.

Several commenters suggested that the counseling requirement should be applicable before entering into the lease-purchase arrangement. These commenters wrote that families should have an idea of what the responsibilities of homeownership are before entering into a lease-purchase arrangement.

One commenter wrote that HUD should continue to allow a family to enter into a lease-purchase arrangement without being subject to the homeownership program requirements.

HUD response. HUD has not changed the requirements specified in the proposed rule for lease-purchase arrangements. The final rule does not require families with lease-purchase arrangements under the Section 8 tenant-based rental program to comply with any of the Section 8 homeownership program requirements. However, HUD believes it is in the best interest of these families for the PHA to brief the family on the homeownership requirements if they expect to receive Section 8 homeownership assistance to complete the purchase transaction. The PHA may refer families participating in lease-purchase arrangements to HUD homeownership counseling agencies. There is generally little or no cost to the participant for this HUD funded counseling.

C. Cooperative housing (§ 982.619).

Comment: Final rule should clarify that the occupancy agreement controls not only the allocation of maintenance responsibility between the cooperative member and the cooperative, but also the rules to which the Section 8 assisted members are subject. Several commenters wrote that consideration and adoption of the rules governing co-ownership is the focus of much democratic process in virtually every housing cooperative. The commenters wrote that few cooperatives would be willing to accept the existence of a differently-privileged class of Section 8-assisted members in their midst.

HUD Response. HUD disagrees that the suggested clarification is necessary. The rule does not change the legal relationship between the cooperative and cooperative member.

Comment: Final rule should clarify that, where rental assistance is used in a cooperative setting, Section 8 assistance may be used for the acquisition costs of cooperative memberships or shares. The commenter wrote that this is especially critical in limited-equity cooperatives, which is the type of cooperative in which most Section 8 rental assistance is used. In limited-equity cooperatives, the share or membership prices are strictly limited to provide ongoing affordability of acquisition to low-income families. Section 8 rental assistance is currently used in these settings to pay for the membership acquisition over time.

HUD response. This comment, which appears to relate only to Section 8 rental assistance, is outside the scope of this rulemaking, which implements the "homeownership option" authorized by section 8(y) of the 1937 Act. HUD notes, however, that the final rule provides that the costs of purchasing a cooperative unit may be included as a "homeownership expense" for purposes of determining the amount of monthly homeownership assistance payment (see § 982.634(c)(4)).

D. Homeownership option: General (§ 982.625)

Comment: Newly constructed homes or units under construction should be eligible for purchase under the homeownership option. Several commenters wrote that in some areas the only affordable housing is new housing being constructed by nonprofits, and that new construction provides greater assurances to low-income families that major repairs will not be necessary. The commenters wrote that the prohibition against new construction would make it more difficult for persons with disabilities to find accessible homes. Other commenters wrote that new construction normally occurs in areas of job growth. The prohibition would therefore prevent families from moving to such an area in search of employment opportunities.

<u>HUD response</u>. In response to these comments, HUD has revised proposed § 982.625, which described the "existing home" requirement. Section 982.628(a)(2) of this final rule provides that a home may be purchased under the homeownership option if, at the time the PHA determines that the family is eligible for Section 8 homeownership assistance, the home is either under construction or already existing. However, before commencing homeownership assistance for the family, the PHA must determine that the home satisfies all of the applicable requirements described in § 982.628 (for example, the home must have been inspected by a PHA inspector and by an independent inspector designated by the family; and the home must meet the HUD Housing Quality Standards (HQS)).

<u>Comment: The homeownership option should be available only to current recipients of Section 8 rental assistance who have successfully complied with all rental program requirements for at least one year</u>. One commenter suggested that homeownership assistance should not be made available at initial admission. According to the commenter, this will facilitate proper counseling and a considered housing search without imposing artificial deadlines.

<u>HUD response</u>. HUD has not adopted this suggestion. HUD notes, however, that PHAs may choose to impose this condition as an additional requirement for eligibility.

<u>Comment: Possible exceptions to the first-time homebuyer requirement</u>. Several commenters made suggestions on possible exceptions to the first-time homebuyer requirement. Other commenters, however, wrote that HUD should retain the first-time homeownership requirements as set forth in the proposed rule, since the definition conforms to the industry standard. Among the suggested exceptions, were exceptions for:

- A divorced spouse who does not retain homeownership interest;
- Persons with disabilities who lost a previous home as a result of becoming disabled;
- Any otherwise eligible person with a disability;
- Victims of domestic violence;
- Current manufactured homeowners;
- Owners of substandard housing; and
- Single parents.

Another commenter suggested that the first-time homebuyer requirement should only apply to the mortgagor, not to the entire family. The commenter wrote that, otherwise, other family members would be unfairly prevented from subsequently enjoying Section 8 homeownership benefits.

Two commenters wrote that homeownership assistance should not be restricted to first-time homebuyers. Several commenters wrote that PHAs should be provided with the option of establishing additional exceptions to the first-time homebuyer requirement.

HUD response. HUD has carefully considered all of the suggested exemptions to the first-time homebuyer requirement and is sympathetic to the circumstances of families in many of the suggested categories. However, HUD has decided not to attempt to specify, by regulation, the many possible situations that may merit an exception to the first-time homebuyer requirement.

However, HUD has revised the definition of "first-time homeowner" at § 982.4 to clarify the eligibility of single parents and displaced homemakers, as those terms are defined in section 956 of the Cranston-Gonzalez National Affordable Housing Act (codified at 42 U.S.C. 12713). Section 956 provides that no displaced homemaker or single parent "may be denied eligibility under any Federal program to assist first time homebuyers" because of previous ownership of a home by or with a spouse. Accordingly, this final rule provides that such individuals are "first-time homeowners" for purposes of the homeownership option and are, therefore, eligible to receive Section 8 homeownership assistance.

In addition, HUD has further revised this definition to clarify that any family who has owned any residential property during the preceding three years (regardless of whether it is the family's principal dwelling unit or not) does not qualify as a first-time homeowner.

Comment: The PHA should not be able to "pass over" a family on its waiting list in order to provide another family homeownership assistance. One commenter suggested that such a practice would be unfair to families on the waiting list. Another commenter suggested that HUD should explicitly forbid separate waiting lists for rental and homeownership assistance.

HUD response. HUD's regulations at 24 CFR part 982, subpart M, provide that a PHA may not set aside program funding for special housing types or for a specific special housing type. The PHA may not require an applicant to use the Housing Choice Voucher program assistance for a particular special housing type. Consequently, a PHA may not maintain separate waiting lists for special housing types or provide a selection preference based on a family's willingness to use the housing choice voucher for a particular special housing type.

Instead, if the PHA opts to offer Section 8 homeownership assistance, the PHA may offer families (both current participants and applicants who have been issued housing choice vouchers) that meet the initial eligibility criteria (including any additional requirements established by the PHA) the opportunity to use their Section 8 assistance to purchase a home. If the PHA has established limits on the number of vouchers that may be used for homeownership, the PHA simply suspends offering Section 8 homeownership assistance at such time that the number of families receiving homeownership assistance, in combination with the number currently in the pre-assistance phrase of the program, reaches the PHA limit.

E. Initial requirements (§ 982.626)

Comment: The rule should allow for homeownership assistance to be used by a family to purchase a two- and three-family home. The commenter wrote that, in certain areas, much of the affordable housing stock consists of two- and three-family homes, and the rental income would help the family meet its share of the homeownership expenses.

HUD response. Homeownership assistance is provided to assist a family with the monthly homeownership expenses of its residence. Homeownership assistance may not be used to assist the family with the monthly expenses for investment or rental property. The family may not use Section 8 homeownership assistance to purchase two- or three-family homes. Accordingly, § 982.628 of this final rule clarifies that a home purchased with homeownership assistance must either be a one unit property or a single dwelling unit in a cooperative or condominium.

Comment: PHAs should not be allowed to establish local eligibility requirements for the homeownership option that are more restrictive than those for Section 8 rental assistance. Several commenters wrote that stricter requirements have the potential to discriminate or discourage users with disabilities from using the homeownership option.

HUD response. HUD has not adopted this suggestion. Section 8(y) specifically requires homeownership eligibility criteria that are not applicable to the Section 8 rental assistance program. In addition, HUD believes it is appropriate for PHAs to have broad administrative authority to target homeownership assistance for specific purposes. Since the PHA has the option whether or not to offer Section 8 homeownership assistance, HUD believes retaining PHA administrative flexibility over this area is important to encourage wider implementation of the homeownership option.

Comment: The prohibition against providing homeownership assistance if the seller is debarred, suspended, or subject to a limited denial of participation imposes a hardship on the purchaser. The commenter wrote that after the purchase agreement is signed, the purchaser is contractually obligated to buy the home according to the terms the parties agreed to. Failure to complete the sale will result in loss of downpayment and could result in the purchaser being sued for failure to perform. An alternative would be to have the PHA conduct a review of the seller before execution of the purchase agreement.

HUD Response. PHAs are encouraged to regularly review the list of individuals and entities that are debarred, suspended or subject to a limited denial of participation in HUD programs. In response to this comment, the final rule provides at § 982.631 that the contract of sale must contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

F. How to qualify for homeownership assistance (§ 982.627)

Comment: The relaxed regulatory requirements for the elderly and persons with disabilities will limit homeownership assistance to these individuals. One commenter wrote that lenders will be wary of the relaxed employment/income requirements established by the proposed rule for the elderly and persons with disabilities. The commenter wrote that lenders, concerned for their risk in underwriting a loan without the usual level of work history, will be less likely to approve home loans for elderly and disabled families.

HUD response. HUD has not revised the rule in response to this comment. The relaxed eligibility requirements for elderly and disabled families are used by the PHA to determine if the family is eligible for homeownership assistance. The rule does not impose relaxed or exception standards for any family with respect to their ability to obtain financing from a lender. Lenders will determine the creditworthiness of each borrower on a case-by-case basis using their own requirements and standards.

G. Minimum income requirements (§ 982.627(b)).

Comment: The minimum income requirements should be eliminated. Several commenters wrote that, since lenders will evaluate a family's resources as part of their mortgage application review, HUD should rely on them to screen out families who do not have sufficient resources to make payments on a mortgage loan, rather than permitting PHAs to establish a minimum income threshold.

HUD response. HUD has not adopted this suggestion. Section 8(y) explicitly establishes a minimum income requirement for participation in the Section 8 homeownership program.

Comment: HUD should establish uniform minimum income requirements. Several commenters wrote that a national standard creates certainty, making it possible for national, regional, or statewide entities (lenders, advocates, intermediaries, nonprofits, etc.) to develop and administer activities in support of the program.

Other commenters wrote that the final rule should restrict the PHA from establishing minimum income requirements that will prevent persons on fixed incomes from receiving homeownership assistance, since elderly and persons with disabilities are often on low, fixed incomes. The commenters recommended that any minimum income requirements established by the PHA should not be so high that they exclude these individuals from homeownership assistance.

HUD response. HUD agrees that the regulation should establish a national standard for the minimum income requirements. As suggested by several of the commenters, HUD has decided to establish a national minimum income requirement that is equal to 2,000 hours of yearly full-time work under the Federal minimum wage. HUD believes that this standard is administratively straight-forward, and addresses the statutory employment requirement without arbitrarily eliminating working families that are making no more than the minimum wage.

Comment: PHAs should be permitted to make reasonable exceptions to the minimum income requirement if they determine that the applicant household has a high probability of being a successful owner. One commenter wrote that the minimum income requirements do not address one of the factors in mortgagor credit review -- a household's total monthly fixed payment obligation. The commenter wrote that a household below the minimum requirement may have an exemplary credit history and no additional debt obligations. According to the commenter, such a household would be a better candidate for homeownership than a household with income above the minimum.

HUD response. HUD has not adopted this suggestion. The minimum income requirement represents the bare minimum income threshold the family must meet to be eligible for homeownership assistance, and does not automatically indicate the family would be a successful candidate for homeownership. Instead of making exceptions to the minimum income requirement for families that otherwise appear to have a high probability of being a successful homeowner, the PHA could work with the family on increasing family income through the FSS program or other self-sufficiency efforts.

Comment: Requiring the "head of household or spouse" to meet minimum income requirement fails to acknowledge the varied structure of some families, and has a disparate impact on single-headed households, domestic partners, and households that have related but unmarried adult members. Several commenters wrote that the minimum income requirements fail to account for the wide variety of families receiving Section 8 assistance. For example, it is possible for the head of household to have no earned income but have a domestic partner, adult child, or other adult family member that works.

HUD Response. The purpose of the minimum income requirement is to ensure that the family has adequate resources to meet the additional costs associated with homeownership. The proposed rule tied the minimum income to the head of household and spouse in order to ensure that those family members who actually owned the home met the income requirement, as opposed to other family members that might shortly leave the household following the purchase (thereby increasing the risk of defaults). However, HUD agrees that this type of restriction does not sufficiently take the variety of family structures into account. Therefore, the final rule provides that the adult family members who will own the home at commencement of homeownership assistance must have qualified monthly income (gross income) that is not less than the minimum income requirement, as opposed to only the head and spouse.

Comment: Disabled and elderly families should be exempt from minimum income requirements. One commenter wrote that although the rule permits public assistance payments to be considered in determining whether an elderly or disabled family meets the minimum income requirements, disabled or elderly families would still have difficulty in meeting the minimum income threshold. The commenter suggested that elderly and disabled families should be exempt from the minimum income requirements, because the goal of rewarding work does not apply to these households.

HUD Response. Section 8(y) does not provide for an exemption from the minimum income requirement for elderly or disabled families, other than the source of income used to determine if the family meets the requirement. The purpose of the minimum income requirement is to ensure that the family has sufficient income available to absorb the additional expenses associated with homeownership, not to ensure that the family meets the employment requirement.

H. Family Employment (§ 982.627(c))

Comment: The employment requirement should be eliminated. Several commenters recommended elimination of this requirement. The commenter wrote that HUD should rely on lenders to determine what is an acceptable employment history, rather than establishing minimum employment requirements or permitting PHAs to establish such requirements. Other commenters wrote that, since a minimum income requirement already exists, the employment requirement is redundant. The commenters suggested that, in the place of an employment requirement, HUD require a family to show proof that it earned the minimum income amount during the past year.

HUD response. The employment requirement is statutory and the requirement is essential to the purpose of rewarding work and assisting families in making the transition to economic self-sufficiency. However, the final rule, in accordance with the law, provides exceptions from the employment requirement for disabled and elderly families.

Comment: PHAs need flexibility in determining whether the family has fulfilled the "continuous" employment requirement. Several commenters wrote that the final rule should focus on whether prospective participants have maintained a steady income, not on whether they have been continuously employed. The commenters wrote that in some parts of the country there are seasonal industries that result in annual full-time income being acquired during only part of the year. Many persons, such as construction workers, nurses, taxi drivers, waitresses and hair dressers, may have multiple employers in the same year. The commenters recommended that the final rule grant PHAs flexibility in interpreting the "continuous" employment requirement.

HUD response. HUD agrees that the employment requirement should allow for small breaks in service to be taken into consideration. The final rule provides that the PHA has discretion to determine whether (and to what extent) a brief interruption is considered permissible. The final rule also clarifies that the PHA may count successive employment during the year and consider self-employment in a business.

Comment: Requiring the "head of household or spouse" to meet employment requirement fails to acknowledge the varied structure of some families. Several commenters wrote that requiring the head of household or spouse to meet the employment requirements will disqualify many non-traditional families. In some extended families the head of household may be unemployed, but there may an adult child who is employed and providing the income upon which the family could qualify for financing. One commenter suggested that the final rule should simply require that an adult member of the household be gainfully employed.

HUD response. HUD agrees with the commenters and the final rule provides that any of the adult family members who will own the home at commencement of homeownership assistance may fulfill the employment requirement.

Comment: The required term of employment should be lengthened. One commenter suggested that HUD should impose a two year employment term. The commenter recommended that the final rule should require either: (1) two years employment with the same employer; or (2) two years employment in the same line of work. The commenter wrote that this is the minimum required by mortgage underwriters. Other commenters suggested that the employment term should be at least three years. Another commenter wrote that the head of household or spouse should be required to be employed for as long as the family is receiving homeownership assistance, with limited periods of unemployment due to circumstances beyond the control of the family taken into consideration.

HUD response. The final rule does not extend the minimum employment term. HUD believes one year of substantially continuous employment is an acceptable minimum threshold and a realistic gauge of the likelihood of continued employment in the future. However, the lender will apply its own underwriting criteria, which may include an employment requirement that is more stringent than the standard adopted by the final rule. The PHA could also choose to lengthen employment time by adopting additional eligibility criteria in accordance with § 982.626(b) of this final rule.

I. Ineligibility of family if head or spouse previously defaulted on a mortgage when receiving homeownership assistance (§ 982.627(d))

Comment: Prohibition against mortgage defaults is unnecessarily restrictive. Several commenters wrote that the requirement is unnecessarily restrictive. These commenters wrote that this is a matter best left to the discretion of the loan underwriter, who will consider the default in determining whether to approve the mortgage.

Another commenter suggested that a family who defaulted on a previous mortgage due to the death of a family member, or other circumstances beyond the family's control, should not be prohibited from receiving future homeownership assistance. The commenter suggested that the final rule should permit the PHA to determine on a case-by-case basis whether the default was beyond the family's control.

HUD Response. The prohibition on participation by a family that previously defaulted on a mortgage while receiving section 8(y) assistance is a statutory requirement. Accordingly, HUD has not adopted the changes suggested by the commenters.

J. Additional PHA requirements for family search and purchase (§ 982.628).

Comment: Delays in provision of assistance may limit effectiveness of program. One commenter wrote that the longer, more unpredictable time frame between the time the PHA determines a family is eligible for homeownership assistance and the time that assistance actually commences would affect lease up rates and PHA financial management. The commenter wrote that this unpredictability may cause PHAs to offer homeownership assistance only to existing participants, rather than allowing new clients to participate.

HUD response. HUD agrees with the comment that permitting applicants to participate in the homeownership option will present PHAs with several significant challenges (such as defining a realistic search term for a first-time homebuyer without creating adverse impact on utilization rates and administrative fees) that do not surface if the PHA limits the option to current rental participants. For this reason, HUD anticipates that most participants in the Section 8 homeownership program will be families currently participating in the tenant-based rental program. The time required for a current participant to locate and purchase a home will have a minimal impact on the PHA's lease-up rate or financial management activities since the family may continue to receive rental assistance in their rental unit during the search and settlement process. The decision to extend the homeownership option to applicants, participants, or both applicants and participants rests with the PHA.

Comment: A family should be allowed more than two months to locate a home. Several commenters wrote that finding a home can be a lengthy process and requires more than two months. Although there was no consensus on the amount of time that should be provided, all of the commenters advocated that the final rule establish an greater length of time for finding a home. Suggestions included a minimum of four months, six months, and a range of six to nine months. A number of commenters wrote that due to the difficulty of finding a home that is both affordable and accessible, the final rule should ensure that persons with disabilities are provided with ample time to find a home to purchase.

HUD response. Neither the April 30, 1999 proposed nor this final rule place a two month limitation on the family's search for a home. Section 982.303 (term of voucher) is not applicable to the homeownership option (see § 982.641(b). HUD has not adopted the suggestions to establish a minimum term for family search and purchase. HUD believes this decision is properly left to the administrative discretion of the PHA, as the housing market will vary from community to community. However, in establishing such time limits, the PHA should ensure that a family who has executed a sales contract is provided reasonable time to close on the purchase of the home.

Comment: The final rule should explicitly provide that if a family is unable to locate a home within the time limits, the PHA should be required to issue a rental voucher or put the family at the top of the waiting list. One commenter made this suggestion.

HUD response. HUD has not adopted this comment. HUD does not wish to impose this type of requirement on PHAs.

Comment: The PHA should provide a letter to the lender verifying the applicant's family income, payment standard assistance, and any other financial help that would be offered to the family. Two commenters wrote that this type of documentation would enable the family to show prospective sellers, realtors, etc. that the family is in fact empowered to make the acquisition of a home. The commenters also wrote that this would assist the lender to pre-qualify the family accurately.

HUD Response. Although HUD is not requiring PHAs to provide such a letter to lenders in the final rule, PHAs may opt to provide prospective lenders or realtors with information concerning the family's participation in the Section 8 homeownership program, the applicable payment standard, and how the monthly subsidy will be calculated under the housing choice voucher program. However, HUD would caution the PHA not to provide income information on an individual family to any third party. The family must disclose income to the lender through the mortgage application process, and the verification of family income for underwriting purposes is the responsibility of the lender, not the PHA.

K. Homeownership counseling (§ 982.629)

Comment: HUD should provide funding for homeownership counseling services. Several commenters recommended that HUD provide additional funding for homeownership counseling. One commenter suggested that HUD should make the additional funds available through a demonstration program or competition. Other commenters wrote that HUD should provide the necessary funding by either an increase in the ongoing administrative fee or by making provisions for approving release of the hard-to-house fee (currently available for assisting large families to lease a unit).

HUD Response. HUD has not accepted these recommendations. There are no additional appropriations made available for this purpose. Furthermore, PHAs can partner with HUD-funded homeownership counseling agencies to provide the necessary counseling. Since these agencies provide homeownership counseling services at little or no charge, the cost incurred by the PHA would be nominal. A list of the HUD-approved homeownership counseling agencies is available from the HUD Housing Counseling Clearinghouse website (http://www.hudhcc.org/agencies/agencies.html).

Comment: Charges to the family for counseling should be nominal. One commenter made this recommendation.

HUD response. Family completion of the pre-assistance homeownership counseling program is mandatory in order for homeownership assistance to commence on behalf of the family. Since the PHA cannot charge a family any type of fee to receive Section 8 assistance, the PHA may not a charge family a fee or otherwise pass on any of the cost of the counseling to the family.

Comment: Paragraph (b) of this section would be more accurate if it read "The PHA-**required** pre-assistance counseling program...." One commenter wrote that the addition of the word "required" would clarify that the PHA itself is not obligated to provide the counseling.

HUD response. HUD agrees with the commenter, and has incorporated the suggested revision in the final rule.

Comment: The final rule should allow as much flexibility as possible to PHAs in the development of counseling programs. One commenter wrote that several of the mandatory counseling requirements may be inappropriate for certain types of PHA homeownership programs. The commenter urged that the final rule provide greater flexibility regarding the crafting of homeownership counseling programs.

HUD response. The final rule clarifies that the PHA-required counseling program should "generally" cover the topics listed in § 982.630. The final rule also provides that the PHA may adapt the housing counseling topics to local circumstances and the needs of individual families. Further, the final rule provides that, if the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

Comment: Counseling programs should include information on fair housing and fair housing lending practices, as well as referrals to local fair housing enforcement agencies. One commenter made this suggestion.

HUD response. HUD agrees with the commenter, and the suggested revision has been incorporated in the final rule.

L. Home inspections and contract of sale (§ 982.630)

Comment: Dual inspection requirements. A number of commenters objected to the proposed dual HQS/independent home inspection requirements. Several commenters wrote that two inspections would be duplicative and add unnecessary expense and time to the homebuying process. The commenters offered various alternatives to the dual inspection requirement. Several commenters suggested that only the independent inspection be required; others recommended that the initial HQS inspection be retained and the requirement for third-party inspection be removed. One commenter suggested that PHAs be granted the discretion to establish criteria for one uniform inspection. Another commenter recommended that the scope of the HQS inspection be expanded to include the desired features of an independent professional home inspection.

Other commenters supported the dual inspection requirement contained in the proposed rule. These commenters wrote that an independent home inspection was useful to identify potential problems that were not immediate deficiencies, but that an HQS inspection is also important to identify basic health and safety issues. One commenter wrote that the HQS inspection was also useful because it limited the possible financial burden on the family by identifying significant HQS deficiencies and eliminating the need for the family to pay for a subsequent independent inspection.

<u>HUD response</u>. After carefully considering the comments, HUD has not changed the requirement that the unit must pass an initial HQS inspection conducted by the PHA and also be subject to an independent professional home inspection. Section 8(y) removes the requirement that the PHA conduct annual HQS inspections, but does not eliminate the requirement that the unit initially meet HQS before assistance payments may commence. The statute specifically requires that the contract of sale provide for a pre-purchase inspection by an independent professional, which is clearly separate and distinct from the statutory HQS inspection.

The purposes of these inspections are also separate and distinct. The HQS inspection determines if the current physical condition of the unit is decent, safe, and sanitary, and is therefore eligible to be assisted under the Section 8 program. It is the sole responsibility of the PHA to determine whether a potential unit meets the HQS requirements of the program.

The HQS inspection is not designed to assess the life span of major components, building systems, appliances and other structural components in order to identify potential problems for the future, such as the need to replace an aging heating system or roof in the next several years. Clearly, such information is important for a potential homebuyer to take into consideration. The requirement for an inspection arranged by the buyer and satisfactory to the buyer is a typical contingency clause in contracts of sale and is consistent with private real estate practice.

HUD does not believe it is advisable to combine the distinct purposes of each inspection into a single inspection. Combining the inspections compromises the independent standing of the professional inspector, who is selected by and paid by the potential buyer, and the separate programmatic role and responsibility of the PHA HQS inspector. HUD also agrees that the initial HQS inspection serves to ensure the family does not enter into a contract of sale or otherwise expend family resources for the independent inspection for units that are ineligible for Section 8 assistance.

Comment: The final rule should provide PHAs the discretion to modify the inspection requirements for new homes. Several commenters wrote that newly constructed homes often come with builder/contractor warranties and that new homes have to pass a series of inspections by local authorities in order to receive a final certificate of occupancy. The commenters recommended that the final rule permit PHAs to establish more relaxed inspection standards for newly constructed homes.

HUD response. HUD has not provided PHAs with the discretion to relax or modify the inspection requirements for newly constructed homes. HUD does not believe that the inspection requirement will prove problematic for new homes. The unit must initially meet the HQS and there is no automatic guarantee against poor construction or other types of problems, regardless of the date of completion of a particular unit.

Comment: HQS inspections should be performed on a regular basis throughout term of assistance. One commenter wrote that HQS inspections should be required annually during the term of homeownership assistance. Another commenter suggested that HQS inspections should be performed at least once every two years at minimum. One commenter wrote that the PHA, or local supportive service provider, should be given the option of performing annual HQS inspections.

HUD response. The statute explicitly provides that the annual HQS inspection is not required for section 8(y) units. While the final rule does not require the PHA to conduct subsequent inspections of the unit, the final rule clarifies that the additional requirements for continuation of homeownership assistance established by the PHA may include additional unit inspections while the family is receiving homeownership assistance (see § 982.633(b)(7)).

Comment: PHAs should be permitted to pay for the independent professional home inspection. Several commenters wrote that, given the expense involved in contracting with a home inspector, PHAs should be provided the option of paying for the independent home inspection.

HUD response. The independent home inspection is supposed to be independent of, not only the seller but also the PHA. The HQS inspection, conducted prior to the time the family enters into a contract of sale and contracts for the independent inspection, and the pre-assistance counseling program should reduce the likelihood of the family having to incur the cost of the inspection for numerous units.

Comment: The independent inspector should be allowed to be an employee or contractor of the PHA. One commenter wrote that some PHAs contract with private nonprofit agencies that provide a variety of housing related services. According to the commenter, these agencies have rehabilitation programs and inspectors that are completely separate from the Section 8 program. The commenter wrote that PHAs should not lose these agencies as a resource for independent inspections.

HUD response. HUD has not adopted this recommendation. The pre-purchase inspection is supposed to be conducted by a professional independent of the PHA. The purpose of the requirement is to provide the potential buyer with an impartial third-party assessment of the physical condition of the property's systems and components. The final rule explicitly provides that the independent inspector may not be a PHA employee or contractor, or other person under control of the PHA.

M. Financing purchase of home; affordability of purchase (§ 982.631)

Comment: PHA administrative authority to establish financing requirements. Several commenters wrote that the PHA is not acting as the lender, nor has an ownership interest in the property, and should not determine acceptable types of financing or establish payment requirements. As an alternative, one of the commenters suggested that HUD should allow PHAs to define in their PHA Plans questionable financing situations (such as balloon payment mortgages) that would trigger a PHA review to determine the reasonableness of the financing arrangement.

Several other commenters wrote that variable interest rates have the potential to negatively impact a first-time homebuyer's success if the mortgage balloons while the family's income remains stagnant. These commenters urged that the final rule establish an absolute prohibition against balloon payments.

HUD response. After carefully considering the comments submitted on this issue, HUD has decided that it is appropriate to retain PHA administrative discretion to establish requirements regarding the terms of the financing. The PHA is in the best position to determine what is workable in its local community, and what level of risk related to variable interest rate mortgages and balloon payments is acceptable for the PHA's homeownership program. HUD believes that the flexibility granted to PHAs by the final rule will help to ensure responsible financial oversight of the homeownership program and that homeowners are provided with necessary protections. In addition, HUD believes that allowing the PHA to prohibit questionable types of financing will increase the number of PHAs willing to offer the homeownership option.

~~While HUD agrees that loans with features like balloon payments are potential problems for low-income borrowers, there may be certain circumstances and localities where the use of such features is appropriate.~~

While HUD believes that PHAs should have the discretion to determine what financing requirements are appropriate for their localities, HUD also wishes to protect families participating in the Section 8 homeownership option from abusive lending practices. HUD has joined with the Department of the Treasury to develop recommendations on legislative, regulatory, and other steps to curb predatory mortgage practices. These recommendations, which are contained in a joint HUD-Treasury report, are based on information that HUD and the Department of the Treasury gathered as co-chairs of the National Predatory Lending Task Force, convened in April, 2000. Through public forums with industry, consumers, consumer advocates, and local and state governments in Washington, Atlanta, Los Angeles, New York, Baltimore, and Chicago, HUD and the Department of the Treasury collected evidence on the nature and growing incidence of predatory lending practices nationwide.

This final rule makes several changes that are designed to ensure that families are protected from abusive lending practices. For example, § 982.632 of this final rule clarifies that the PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or financing for improvements or repairs if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications.

PHAs are encouraged to analyze each loan (including refinancing or financing for improvements or repairs) before providing assistance to determine whether the lender and the loan meet its qualifications. While no one set of abusive practices or terms characterizes a predatory mortgage loan, PHAs should be particularly careful of loans with the following features: loans in which financing costs represent a high percentage of the total loan amount; loans that include high credit insurance premiums; balloon payments that the borrower will be unable to repay; interest rates (including variable rates) significantly higher than conventional mortgages; pre-payment penalties, especially penalties that extend over long terms; high ratios of family debt to income; ~~and~~ loans based on unverified sources of income or without regard to the borrower's ability to repay; excessive fees or fees "packed" into the loan amount without the borrower's understanding; and "loan flipping" accompanied by high fees (including prepayment penalties that strip the borrower's equity with each successive refinancing).

HUD will revise its regulations for the Section 8 homeownership option, as appropriate, to implement legislative or other changes made in response to the joint HUD-Treasury report. A copy of the joint report may be obtained through HUD's internet homepage at www.hud.gov..

~~Section 982.632 of this final rule clarifies that a PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or financing for improvements or repairs if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications.~~

Comment: The final rule should establish uniform qualification requirements for lenders. One commenter wrote that examples of this type of lender or financial program qualifications might include identifying specific entities (such as conventional mortgage lenders) that regularly participate in the secondary market or that participate in governmental lending or mortgage insurance programs; State Housing Finance Agency programs; subsidy programs administered by states, counties, cities, or subdivisions; and nonprofit organizations.

HUD response. HUD believes such a requirement is too restrictive and could inappropriately limit available financing in some markets. The final rule continues to allow the PHA to establish requirements concerning the qualification of lenders but does not impose any for the program as a whole.

Comment: Final rule should not require or permit the PHA to establish homebuyer downpayment requirements. Several commenters opposed any homebuyer downpayment requirements under the homeownership program. One commenter wrote that requiring families to make downpayments from their own resources will effectively prevent families residing in expensive housing markets from ever participating in the homeownership option. Another commenter wrote that foreclosures are not caused by families choosing to walk away from a home because they have equity invested but because they lose their income.

HUD response. The proposed rule did not propose to establish a minimum downpayment requirement, but proposed to grant the PHA flexibility to establish a requirement for a minimum homeowner equity payment from the family's personal resources. The final rule continues to provide this flexibility to the PHA. A PHA may determine that a minimum contribution by the family for the downpayment is appropriate to demonstrate the family's commitment and readiness for the responsibilities of homeownership.

Comment: Final rule should permit seller contributions to downpayment/closing costs. According to one commenter, this policy would increase housing choice for participating families.

HUD response. This final rule does not prohibit seller contributions to the downpayment or closing costs. However, the final rule continues to provide that the PHA may establish a minimum equity requirement from the family's personal resources, types of financing, and qualifications of lenders. The PHA's administrative policy on these subjects might impact on the extent to which seller contributions would be permissible. In addition, individual lenders may have underwriting criteria impacting seller contributions to the downpayment or closing costs, which would be applicable regardless of the PHA policy regarding seller contributions.

Comment: Use of FHA underwriting standards for non-FHA insured loans. Several commenters supported the requirement that all loans under the Section 8 homeownership program meet FHA underwriting criteria. On the other hand, other commenters wrote that the use of FHA underwriting standards would unduly restrict the availability of properties available for purchase. These commenters wrote that the use of FHA criteria would prevent families from using other types of flexible mortgage financing designed to assist low-income homebuyers. Some commenters also wrote that the added burden and restrictions of complying with FHA requirements would deter lenders from participating in the program.

HUD response. After considering the comments on this issue, HUD has revised the rule by removing the requirement that purchases of homes financed without FHA-insured mortgage assistance must, nonetheless, comply with the basic mortgage insurance credit underwriting requirements for FHA-insured single family mortgage loans.

HUD proposed this requirement to minimize the risk of default by imposing a minimum underwriting standard. However, HUD agrees that imposing FHA requirements on non-FHA loans would unduly restrict the availability of financing vehicles and options for Section 8 homeownership families. FHA underwriting requirements are in place for FHA mortgages to protect the solvency of the FHA fund but may not necessarily be an appropriate standard for non-FHA loans. In fact, mandating FHA underwriting standards would result in eliminating desirable non-FHA financing options for families, such as foundation funds or State programs for first-time homebuyers.

The final rule clarifies that if purchase of the home is financed with FHA-insured mortgage financing, the financing is subject to FHA insurance credit underwriting requirements. Otherwise, the underwriting standards of the individual lender and/or financing program will apply in cases where financing for purchase of the home is not FHA-insured.

Comment: PHA authority to disapprove proposed financing if the PHA determines the debt for the purchase of the home is unaffordable. One commenter recommended that the final rule should require the PHA to take a family's expenses into account in determining whether to approve the financing for a homeownership loan. Another commenter suggested that the final rule should establish uniform standards for use by PHAs in assessing the affordability of debt. The commenter wrote that a national standard will provide certainty for institutions seeking to develop programs designed to dovetail with the homeownership option. The commenter recommended that a standard similar to that used in the HOME program or the USDA Section 502 Direct loan program be adopted.

Another commenter wrote that the PHA's right to review and disapprove financing should be limited to seller financing. The commenter wrote that reputable mortgage lenders have no incentive to underwrite loans that will default.

HUD response. The final rule retains the broad PHA administrative discretion to disapprove proposed financing if the PHA determines that the debt for the purchase of the home is unaffordable. HUD believes that local administrative flexibility is appropriate, and that the decisions as to what level of debt is unaffordable or what terms of financing are appropriate are best left to the PHA.

N. Continued assistance requirements; family obligations (§ 982.632)

Comment: The family should obtain PHA approval prior to entering into refinancing agreements or securing additional financing on the home (whether to finance repairs, consolidate debts, or for any other reason) and the family should secure counseling before such action. One commenter made this suggestion.

HUD response. HUD agrees that the PHA should have the option to require prior PHA approval before the family enters into a refinancing agreement or secures additional financing on the home. Accordingly, § 982.632 of the final rule incorporates the suggestion made by the commenter.

Comment: HUD should develop contracts for use in the Section 8 homeownership program. One commenter wrote that a Statement of Homeowner Obligations is not a contract and would probably be insufficient if the PHA has to turn to the local courts. The commenter recommended that HUD develop two separate contracts for use by PHAs -- one if the payments are made directly to the family and another for payments made directly to the lender.

HUD response. The PHA is not contractually obligated to make payments to the lender. The HAP payments to the lender are made on behalf of the family, not the PHA. If the HAP payment were to cease, the family would still be responsible for the full monthly mortgage payment due the lender. Furthermore, mortgages are often sold and families may refinance. Encumbering the mortgage or the lender with a mandated HUD contract may ultimately discourage lender participation in the program.

Comment: Homebuyers should be required to demonstrate that real property taxes, assessments, water taxes, etc., are current on an annual basis. One commenter made this suggestion.

HUD response. HUD has not added evidence of payment of taxes as a specific requirement for continued homeownership assistance in the final rule. However, § 982.633(b)(7) permits PHAs to establish additional requirements for the continuation of homeownership assistance, which could include such a requirement. HUD believes that imposing a requirement of this type is best left to the discretion of the individual PHA.

O. Maximum term of homeownership assistance (§ 982.633)

Comment: What is the appropriate length of time to provide homeownership assistance to the family? Several commenters wrote in support of the ten year limit. Other commenters urged HUD to extend the 10 year limit. Many of these commenters suggested that the maximum term be extended to fifteen, twenty, or thirty years, to better reflect usual mortgage terms. The commenters urging an extension of the maximum 10 year period stated that the shorter term would discourage lenders and the secondary mortgage market from participating in the program. Several of these commenters wrote that in ten years it is unlikely that the unamortized balance of a mortgage could be refinanced at a monthly payment affordable to an unassisted homeowner, therefore resulting in a large number of mortgage defaults. Accordingly, the commenters stated that the maximum term might limit homeownership assistance to higher income families able to afford the increased mortgage payments following the termination of assistance. Further, low income families concerned about defaulting at the end of the maximum term would be forced to purchase in depressed real estate markets, such as minority and/or poverty concentrated areas.

On the other hand, a number of commenters wrote that the ten year maximum term should be reduced to three, five, or seven years. These commenters stated that by providing a mortgage subsidy for ten or more years, HUD would be promoting ongoing dependency on Section 8 assistance and reducing the availability of limited Section 8 resources for other families.

A couple of commenters wrote that the final rule should establish a uniform maximum term instead of permitting a PHA to establish a maximum term shorter than ten years. The commenters stated that without the availability of a uniform program time period, lenders and other agencies likely to provide subsidy assistance would find it difficult to develop national or regional programs to support the homeownership option. However, other commenters recommended that PHAs should have absolute flexibility to determine the maximum term of assistance based on their local housing needs.

HUD response. After carefully considering the comments on the maximum term for a family to receive homeownership assistance, HUD has significantly revised the requirement in the final rule.

HUD agrees that there is a need to establish a Federal standard regarding the maximum time that a family may receive homeownership assistance to ensure that the program is equitable for all families receiving homeownership assistance. Further, a uniform Federal standard will establish consistency across jurisdictional lines, thus facilitating wider lender participation. The final rule removes PHA discretion to establish a shorter minimum term than the Federal standard.

HUD also believes that a time limit is appropriate for homeownership assistance. The purpose of the Section 8 homeownership program goes beyond simply defraying the monthly homeownership costs as opposed to rent. Rather, the objective is to move an assisted renter into homeownership in order to foster responsibility and assist the family in ultimately achieving economic self-sufficiency. A related statutory objective is to assist renters make the transition to economic self-sufficiency. This objective is made clear from the fact that section 8(y) targets homeownership assistance to first-time homebuyers. The statute does not expand eligibility for scarce Section 8 assistance to existing homeowners.

The final rule provides for a mandatory term limit on homeownership assistance of 15 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer. In all other cases, the maximum term of homeownership assistance is 10 years. HUD believes that a family should be able to assume the full responsibility for monthly homeownership expenses at the end of such time. HUD also believes that the maximum term established by this final rule is sufficient to achieve broad lender participation.

HUD understands the concerns raised by some of the commenters regarding Section 8 homeowners who, due to circumstances beyond their control, are unable to assume full responsibility for the monthly homeownership expenses at the end of the maximum term. HUD encourages PHAs and families to realistically assess the family's economic situation a year or so before the conclusion of the maximum term of the homeownership assistance. The family would then be in a position to decide whether it might be in the family's best interest to sell the property and return to Section 8 rental assistance.

The final rule retains the provision that if the family receives homeownership assistance for different homes or from different PHAs, the total of assistance term is subject to the regulatory maximum term (15 or 10 years, depending on the length of the initial mortgage to purchase the first unit under the homeownership option).

As in the proposed rule, the final rule provides that the maximum term limit does not apply to elderly or disabled families. The final rule clarifies that, in the case of an elderly family, the exception is only applied if the family qualifies as an elderly family at the commencement of homeownership assistance. For instance, if a family is a non-elderly family when homeownership assistance commences, the family is still subject to the term limit on assistance even if the family subsequently meets the definition of an elderly family during the term. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

Comment: Does the maximum term requirement mean that no person in the family may have received more than ten years assistance? One commenter asked whether the daughter of a head of household who has resided in a home purchased under the homeownership option for ten years would be prohibited from applying for assistance to purchase her own home. The commenter recommended that the final rule clarify that the maximum term applies only to those family members who obtained an ownership interest through the program.

HUD response. The final rule clarifies that the time limit applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is the spouse of any member of the household who has an ownership interest in the unit at the time homeownership payments are made.

P. Amount and distribution of monthly homeownership assistance payment (§ 982.634)

Comment: Families should be permitted to receive homeownership assistance for the initial 3 years of the mortgage term, even if HAP assistance is reduced to zero as a result of the annual examination of the family's income. According to the commenter, this recommendation would provide a safety net for mortgage lenders and would be consistent with current underwriting requirements, which require payments like child support to be available for a minimum of 36 months.

HUD response. The length of time a family will remain eligible for a subsidy in the homeownership program is the same as in the rental program. During this time, the family has a subsidy slot reserved, thereby denying use of the assistance by another deserving family. In light of the severe needs for housing assistance and the length of time applicants must already wait to receive assistance, HUD has not revised the rule to increase the length of time the subsidy slot is reserved for a family who has a relatively high income and no longer qualifies for a subsidy.

Comment: The final rule should provide that a stable bedroom-size assistance level will be provided to the family throughout the life of the mortgage. Three commenters worried that as children leave home Section 8 assistance levels would be reduced, therefore jeopardizing the ability of a family to maintain its mortgage payments. The commenters wrote that such fluctuating assistance levels would discourage lenders from participating in the program.

HUD response. HUD does not need to revise the proposed rule to address this concern. The final rule retains the provision that protects the homeowner from decreases in the normally applicable payment standard. The payment standard for a family receiving homeownership assistance is the greater of the payment standard at the commencement of homeownership assistance for occupancy of the home or the payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home. This policy minimizes the risk of default due to decreases in the payment standard or changes in family composition.

Comment: Should the family or the lender receive the HAP payments? Several commenters suggested that HAP payments should only be made directly to the lender and never to the family. One of the commenters wrote that this would increase the efficiency of program administration. Other commenters were concerned that a family might inappropriately use the funds and potentially jeopardize the mortgage. One of the commenters also suggested that shelter costs (such as debt service, property taxes, insurance and reserve for replacement) be built directly into the mortgage payment.

Several other commenters wrote that the payments should be made directly to the family and not the lender. The commenters wrote that it would be an administrative nightmare for lenders to be required to accept separate payments from the homeowner (for the family's portion) and the PHA. The commenters recommended that the assistance payment should be made by the PHA as a direct automatic deposit into the family's bank account with provisions for automatic withdrawal of the mortgage amount by the lender.

HUD comment. This final rule continues to provide that the PHA may make the homeownership assistance payment either directly to the family or to a lender on behalf of the family. The PHA may determine it is necessary to make housing assistance payments directly to the family in order to secure lender participation, thereby avoiding the possibility that both the PHA and the family will be sending checks to the lender for the mortgage payment. On the other hand, some lenders may indicate their participation is contingent on receiving the payment directly from the PHA.

The final rule clarifies that if the PHA decides to make the homeownership assistance payment directly to the lender, and the assistance payment exceeds the amount due to the lender, the PHA must pay the excess amount directly to the family.

Comment: To prevent loss of home due to unpaid taxes, the final rule should require that the mortgage payment include taxes. One commenter made this suggestion.

HUD response. This is a matter that is more appropriately left to negotiation between the lender and the family, subject to any local or state laws.

Comment: PHAs should be permitted to set a separate payment standard for the homeownership program. Several commenters wrote that PHAs should have the latitude to set a separate payment standard for the homeownership option. For example, a payment standard of 95% of the Fair Market Rent (FMR) might work for the rental market, but for the for-sale market a payment standard of 105% might be more appropriate. Another commenter wrote that, if the unit selected by the participating family is new, the PHA should have the latitude to adjust the payment standard to account for the superiority of the housing unit.

HUD response. HUD has not made the recommended changes. The subsidy level for a homeowner should not be higher than for a renter under the tenant-based program. Fewer families would be assisted if HUD provided a higher subsidy to homeowners. Also, it would not be equitable to provide larger subsidies for families who are more likely (on average) to have higher incomes than their counterparts receiving rental assistance.

Comment: What do "monthly homeownership expenses" include? Two commenters requested clarification regarding the items included in "monthly homeownership expenses."

HUD response. The final rule lists the items that comprise the monthly homeownership expenses at § 982.635(c).

Comment: Homeownership expenses should not include maintenance expenses nor major repairs and replacements. One commenter wrote that these are expenses that come with the risk of homeownership. The commenter wrote that families participating in the program should have the means to maintain their home and protect the investment without subsidy.

HUD response. HUD has not adopted this comment. The costs of maintaining and repairing a home are significant expenses associated with homeownership. HUD does not believe it is inappropriate to consider these costs in determining the monthly homeownership expense for a family. Furthermore, in any case where the family's monthly homeownership expenses exceed the applicable payment standard, the maximum subsidy that may be paid on behalf of a family is capped by the applicable payment standard. Reimbursement for such expenses is therefore limited by the voucher subsidy formula.

Comment: In addition to the allowance for major home repair and replacements, there should also be consideration for the cost of modifications to make a home accessible to owners with disabilities. Several commenters wrote in support of this change to the proposed rule.

HUD response. The final rule clarifies that where a member of the family is a person with disabilities, mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home may include debt incurred by the family to finance costs needed to make the home accessible for the disabled person, if the PHA determines the allowance is needed as a reasonable accommodation.

Comment: Other items should be considered in determining the homeownership expenses. Several commenters suggested the consideration of various items in the determination of homeownership expenses, including water and sewer fees; condominium fees; and homeowner association fees.

HUD response. Water and sewer fees were already covered in the proposed rule under the PHA utility allowance for the home. The final rule has been amended to provide that if the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium operating charges or maintenance fees, or charges assessed by the condominium or cooperative homeowner association.

Comment: HUD should develop a uniform rule for allowances of homeownership expenses. The proposed rule would allow PHAs to adopt policies for determining the amount of homeownership expenses in determining the family's Section 8 subsidy amount Several commenters stated that giving discretion to PHAs to exclude any of these amounts as expenses would create great inequities across jurisdiction lines. The commenters suggested that HUD adopt a uniform rule regarding homeownership expenses. One of the commenters recommended that all of the listed items be considered homeownership expenses.

HUD response. The proposed rule and the final rule do not provide the PHA with the discretion to exclude any of the listed homeownership expenses or to add any additional items. The PHA is responsible for determining the appropriate allowance amount provided for maintenance expenses; major repairs and replacements; and utilities (which is the same utility allowance amount that applies to the voucher program as a whole). HUD believes it is appropriate for the PHA to determine the allowance amounts provided for the homeownership expenses, since a realistic projection of these average costs will vary from jurisdiction to jurisdiction.

Q. Portability (§ 982.635)

Comment: Applicability of portability to the homeownership program. Several commenters suggested that homeownership assistance should be freely portable. The commenters wrote that restricting portability would prohibit a family living in a center city from pursuing job opportunities in suburban areas where the homeownership option is not provided.

One commenter suggested that if a person with a disability finds a home outside the jurisdiction of the initial PHA, the initial PHA should be permitted to continue to administer the program where the receiving PHA will not provide homeownership assistance. The commenter wrote that the final rule could also require the receiving PHA to provide homeownership assistance to the person with the disability.

Several other commenters recommended that portability of assistance under the Section 8 homeownership program between PHA jurisdictions should be prohibited. One commenter wrote that Section 8 homeownership funding is provided by HUD to assist local needs and should not be transferable to another jurisdiction that has chosen not to provide such assistance.

HUD response. As noted above, HUD has clarified the portability procedures of the proposed rule, which provide that the family may qualify to move outside the initial PHA jurisdiction with continued assistance under the voucher program. In general, the receiving PHA is not required to permit families that move into the PHA's jurisdiction to receive any special housing type (including homeownership assistance), regardless of whether the family was receiving such assistance at the initial PHA. While the family participating in the Housing Choice Voucher program has the portability right to move anywhere in the country where a PHA administering tenant-based assistance has jurisdiction, Section 8(y) also provides the PHA with the sole discretion to determine whether to make homeownership assistance available. A family under the homeownership option retains the portability rights of the Section 8 voucher, but may only continue to receive homeownership assistance if the receiving PHA runs a homeownership program and is accepting additional homeownership families.

Comment: PHAs should be authorized to enter into homeownership transactions outside their normal service areas, provided no other PHA runs a homeownership program in that area. The commenter wrote that this policy would follow the principle of promoting maximum portability wherever the PHA is willing to administer the program.

HUD response. HUD has not adopted this comment. The PHA area of operation is determined by state law, and the language of Section 8(y) does not provide a statutory basis for overriding state law with respect to PHA administration of the homeownership option.

R. Move with continued tenant-based assistance (§ 982.636)

Comment: A family should not be permitted to use the homeownership option more than once. One commenter questioned whether the policy permitting a family to purchase multiple units with voucher assistance was a prudent use of scarce housing subsidy dollars.

HUD response. Both the proposed and final rules permit the family to purchase one or more subsequent homes with continued Section 8 assistance, provided that the head of household or spouse has not defaulted on a mortgage securing debt incurred to purchase the home (see §§ 982.627(e) and 982.637 of this final rule). HUD believes it is appropriate to permit family mobility in the homeownership program. Families may need to move for a number of compelling reasons such as safer neighborhoods, better schools, because more or less space is needed, or to be closer to a job.

The final rule provides that the PHA may not commence homeownership assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior unit. As noted earlier, the final rule provides that the family cannot be assisted if they own another residential property. HUD agrees that it is appropriate to limit homeownership assistance only to families that do not own other residential property. The purpose of the program is to help families meet their immediate housing needs and limited assistance funds should not be provided to families who currently own another home, regardless of whether the family chooses not to make that property their primary residence.

Comment: The final rule should provide for the recapture of homeownership assistance upon the sale or transfer of the home. Several commenters made this suggestion. There was no consensus among these commenters as to the extent of the recapture. Two of the commenters suggested that recaptures should only apply to half of the homeownership assistance payments made to or on behalf of the family. One of these commenters also suggested that the PHA should use the recaptured proceeds to assist other Section 8 families. Another commenter wrote that any recapture provision should be designed to limit the amount of equity that a participant may realize through the sale of a home under the Section 8 homeownership program.

<u>HUD response</u>. HUD agrees with the commenters that it is appropriate for HUD to recapture homeownership assistance upon the sale or refinancing of the home. Further, HUD agrees with the commenters that the recaptured assistance should be used to assist additional housing choice voucher assistance families. HUD recognizes that the possibility of accumulating equity in the property and the realization of profit upon sale is an important facet of homeownership. However, HUD believes these benefits can be realized even if a portion of the assistance payments made on behalf of the family are retained by the PHA out of the net sales proceeds of the property in order to further assist other needy families.

The final rule establishes a new § 982.640 that provides for such recaptures. PHAs shall recapture <u>a percentage of</u> the homeownership assistance <u>defined in the regulations</u> upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a "cash-out" of the refinanced debt) are subject to the new recapture provision.

New § 982.640 requires that, upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

The homeownership assistance subject to recapture shall automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. For example, if the family sells the home during the first year after purchase, the PHA will recapture 100% of the homeownership assistance provided to the family. If the family sells one year (but less than two years) after purchase, the PHA will recapture 90% of the homeownership assistance, etc. At the end of the 10 year period, the amount homeownership assistance subject to recapture will be zero.

Comment: HUD should clarify how to treat a rollover sale by which the family sells one unit to purchase another. The commenter questioned if the profit from the sale of the first property should be counted as income (for purposes of determining the total tenant payment) if the family purchased or rented another unit with Section 8 assistance.

HUD response. In calculating the family income, the treatment of income realized by the family as a result of the sale of a home purchased with assistance under the homeownership program is no different than treatment of net income from real property under 24 CFR part 5. However, in accordance with § 982.640 of this final rule, the PHA may recapture a percentage of the homeownership assistance provided to family upon the sale or refinancing of the home (see the discussion of the preceding comment). Any profit remaining from the sale or refinancing after the recapture is "income", and may reduce the amount of future subsidy for the family.

Comment: If a family participating in the homeownership program decides to "switch back" to rental assistance, must the family first sell its home before receiving rental assistance?

HUD response. Yes, the family must sell its home before the family can receive continued Section 8 rental or homeownership assistance in another unit. The final rule makes this clarification.

Comment: What ramifications should a family default have on continued participation in the rental program? Several commenters suggested that a family that defaults on its mortgage should not be allowed to receive Section

8 rental assistance. The commenters recommended that the family should be placed on the waiting list. However, there was no consensus among these commenters regarding where on the waiting list the family should be placed. For example, one commenter wrote that the family should not be penalized through placement at the end of the waiting list. Another commenter, however, recommended that a defaulting family should be placed at the bottom of the Section 8 waiting list.

Two commenters wrote that a family that defaults should be required to re-apply for Section 8 assistance (rather than being placed back on the waiting list). One of the commenters believed that it would be unfair to other families to place the defaulting family on the waiting list (even at the bottom of the list) since in many jurisdictions Section 8 waiting lists are closed for an extended periods.

Several commenters recommended that the PHA should have the flexibility to develop its own guidelines regarding the provision of rental assistance after a default or to handle such matters on a case-by-case basis. The commenters wrote that there may be circumstances beyond the recipient's control (such as death, divorce, disability, or job lay-off) that result in a default. The commenters wrote that a recipient should not be penalized in these instances.

HUD response. The proposed and final rule both provide that the PHA may terminate the family's participation in the voucher program if the family fails to comply with the terms of the mortgage (for instance, if the family defaults). Like other grounds for denial or termination of voucher assistance, the decision whether to deny the family's continued participation in the voucher program or to permit the family to automatically be placed back on the waiting list rests with the PHA.

The final rule also retains the statutory provision that if the family defaults on an FHA-insured mortgage, the PHA must terminate the Section 8 assistance and may not issue the family a rental voucher unless the family: (1) moves from the unit within the specified time period established or approved by HUD; and (2) conveys the title to the home, as required by HUD, to HUD or HUD's designee. Even if the family complies with these requirements, the PHA may still deny the family continued participation in the rental voucher program, since the family did not comply with the family obligations under § 982.633.

The final rule continues to leave the decision on the ramifications of the termination of homeownership assistance because of a default with the PHA. The PHA may allow the family to move and receive rental assistance (except in cases where the family defaulted on an FHA-insured mortgage and has not complied with HUD requirements for conveyance and possession of the property). The PHA may also choose, consistent with the PHA policy in the PHA administrative plan, to require the family to reapply for rental assistance. The PHA may place the family at the bottom of the list, at the top of the list, or wherever the family would normally fall based on PHA preferences. The PHA may also prohibit the family from re-applying for assistance for a certain period of time. HUD notes that the family may request an informal hearing if a current participant that has defaulted on a mortgage for a Section 8 homeownership unit is denied a rental voucher.

Comment: The incentives provided for rapid possession and title conveyance for homes with FHA mortgage defaults should be extended to all lenders including secondary market agencies. Two commenters made this suggestion.

HUD response. As noted above, the PHA must deny the family continued assistance if the family defaults on an FHA-insured mortgage and does not comply with HUD requirements. HUD has not extended the mandatory termination provision to a family who defaults on a non-FHA mortgage.

Section 8(y) provides for the mandatory termination of a family that does not comply with HUD requirements to convey title and vacate the property because the Federal government has a vested interest in protecting the FHA insurance fund. HUD does not believe that it is appropriate to extend this mandatory termination policy in the case of non-FHA mortgages. There may be circumstances where the terms of the mortgage or the conditions for rapid possession and title conveyance to the lender are not reasonable. The PHA should have the discretion to decide how to address these situations.

Comment: The final rule should require lenders to provide a copy to the PHA of any default notice at the same time such notice is sent to the borrower. One commenter made this suggestion.

HUD response. HUD has not revised the rule to incorporate this suggestion. HUD believes the recommended change could negatively impact lender participation and the sale of mortgages on the secondary market. Section 982.633(b)(6) of the final rule retains the requirement that the family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

S. Administrative fees (§ 982.637)

Comment: Additional HUD funding is needed for implementation of new program. One commenter identified various requirements of the homeownership option that will require staff time and new staff expertise to carry out. The commenter suggested that HUD should compensate PHAs on a performance basis and provide some preliminary funding to set up the program. Another commenter wrote that HUD should provide a one time incentive of $5,000 for each homebuyer family as an incentive for PHAs to participate.

HUD response. The final rule has not adopted these suggestions. Section 8(y) is intended to provide PHAs with added flexibility in serving the housing needs of their local communities within the existing framework and funding constraints of the Section 8 Housing Choice Voucher program. HUD does not have any additional or separate funding to increase administrative fees for PHAs that choose to exercise the homeownership option.

It is true that the PHA has some additional administrative duties for homeownership families. However, there is a corresponding reduction in the administrative responsibilities that the PHA must perform for a family receiving rental assistance over the duration of the family's participation in the program. For example, the PHA is not required to determine rent reasonableness or conduct annual HQS inspections under the homeownership option.

Comment: HUD should consider allowing the PHA to impose a one-time fee on families participating in the program to offset additional PHA expenses, such as marketing, developing program materials, and coordinating activities with homebuyer counselors. One commenter made this suggestion.

HUD response. HUD has not adopted this suggestion. PHAs may not charge families fees to participate in the homeownership program or for the normal program responsibilities to be performed by the PHA. Although there are additional PHA upfront responsibilities associated with a family purchasing a home, the time necessary to perform the PHA's ongoing responsibilities will decrease since rent reasonableness and annual HQS inspections are not required in the homeownership program.

VII. Performance-Based Standards for the Section 8 Homeownership Option

HUD intends to develop performance-based standards for the Section 8 homeownership option. HUD would use these standards to monitor PHA program performance in administering their Section 8 homeownership programs, and to determine whether HUD intervention is appropriate due to excessive mortgage default rates.

VIII. Findings and Certifications

Paperwork Reduction Act

The homeownership option is a special housing type under 24 CFR part 982, subpart M, of the unified rule for the Section 8 tenant-based voucher and certificate program. The information collection requirements of the Section 8 rental certificate and voucher programs approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) are not increased by the implementation of this new special housing type. While the rule substitutes several variations to existing requirements under the normal Section 8 tenant-based program, the homeownership option does not increase the total reporting and recordkeeping burden resulting from the collection of information for the Section 8 certificate and voucher programs. The following provisions of this final rule contain information collections: §§ 982.305, 982.629, 982.631, 982.633, and 982.638.

The OMB approval number for the Section 8 tenant-based assistance program is 2577-0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223) at the proposed rule stage That FONSI remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under executive Order 12866, Regulatory Planning and Review. OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) A Substantial Number of Small Entities Will Not be Affected. The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the final rule will permit a PHA to provide Section 8 tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) No Significant Economic Impact. The final rule will not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule is exclusively concerned with the establishment of an alternative use of Section 8 rental voucher assistance. Specifically, the rule authorizes a PHA to provide tenant-based assistance for an eligible family that purchases a dwelling unit that will be occupied by the family. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance number for the program affected by this final rule is 14.855.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs--housing and community development, Grant programs--Indians, Individuals with disabilities, Loan programs--housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

~~24 CFR Part 903~~

~~Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements~~

24 CFR Part 982

Grant programs--housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

For the reasons described in the preamble, HUD amends 24 CFR parts 5~~,~~ ~~903,~~ and 982 as follows:

PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

AUTHORITY: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.603(d), revise the definition of "net family assets" by adding new paragraph (4) to read as follows:

§ 5.603 Definitions.

* * * * *

(d) * * *

Net family assets. * * *

(4) For purposes of determining annual income under § 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

* * * * *

~~**PART 903 -- PUBLIC HOUSING AGENCY PLANS**~~

~~**3.** The authority citation for part 903 continues to read as follows:~~

~~**AUTHORITY:** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).~~

~~**4.** Amend § 903.7 by adding a sentence at the end of paragraph (k) to read as follows:~~

~~**§ 903.7 What information must a PHA provide in the annual plan?**~~

~~* * * * *~~

~~(k) * * * In the case of a section 8(y) homeownership program, the PHA must also demonstrate that it has the capacity, or will acquire the capacity, to properly evaluate lender qualifications, loan terms, and other financing aspects associated with section 8(y) homeownership assistance.~~

~~* * * * *~~

PART 982 -- SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

3. The authority citation for 24 CFR part 982 continues to read as follows:

AUTHORITY: 42 U.S.C. 1437f and 3535(d).

4. Amend § 982.4 as follows.

a. In paragraph (a)(4), revise the phrase "and `utility reimbursement'" to read "`utility reimbursement' and `welfare assistance'";

b. In paragraph (b), revise the definitions of "Cooperative," and "Special housing types";

c. In paragraph (b), remove the definition of "Mutual housing"; and

d. In paragraph (b), add the definitions of "Cooperative member," "Family," "First-time homeowner," "Home," "Homeowner," "Homeownership assistance," "Homeownership expenses," "Homeownership option, "Interest in the home," "Membership shares," and "Statement of homeowner obligations" in alphabetical order.

§ 982.4 Definitions.

*   *   *   *   *

(b) *   *   *

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member. A family of which one or more members owns membership shares in a cooperative.

*   *   *   *   *

Family. A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program. See discussion of family composition at § 982.201(c).

*   *   *   *   *

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term "first-time homeowner" includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse. "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

* * * * *

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. In the homeownership option: Monthly homeownership assistance payments by the PHA. Homeownership assistance payment may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see § 982.634).

Homeownership option. Assistance for a homeowner or cooperative member under § 982.625 to § 982.638. A special housing type.

* * * * *

Interest in the home. In the homeownership option:

(1) In the case of assistance for a homeowner, "interest in the home" includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.

(2) In the case of assistance for a cooperative member, "interest in

the home" includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

*   *   *   *   *

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular apartment in the cooperative, and the right to participate in management of the housing.

*   *   *   *   *

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

*   *   *   *   *

5. Add § 982.305(b)(4) to read as follows:

§ 982.305 PHA approval to lease a unit.

*   *   *   *   *

(b) *   *   *

(4) In the case of a unit subject to a lease-purchase agreement, the PHA must provide written notice to the family of the environmental requirements that must be met before commencing homeownership assistance for the family (see § 982.626(e)).

*   *   *   *   *

6. Add § 982.317 to read as follows:

§ 982.317 Lease-purchase agreements.

(a) A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

(b) In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with § 982.503, any homeownership premium paid by the family to the owner must be excluded when the PHA determines rent reasonableness.

7. Revise 982.352(a)(6) to read as follows:

§ 982.352 Eligible housing.

(a) * * *

(6) A unit occupied by its owner or by a person with any interest in the unit.

* * * * *

Subpart M--Special Housing Types

8. Amend § 982.601 as follows:

a. Revise paragraphs (a), (b)(1), and (b)(2);

b. Remove paragraph (d);

c. Redesignate paragraph (c) as paragraph (d);

d. Remove the first sentence of newly designated paragraph (d); and

e. Add new paragraphs (c) and (e) as set forth below.

§ 982.601 Overview.

(a) Special housing types. This subpart describes program requirements for special housing types. The following are the special housing types:

(1) Single room occupancy (SRO) housing;

(2) Congregate housing;

(3) Group home;

(4) Shared housing;

(5) Manufactured home;

(6) Cooperative housing (excluding families that are not cooperative members); and

(7) Homeownership option.

(b) PHA choice to offer special housing type. (1) The PHA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home when the family owns the home and leases the manufactured home space, cooperative housing or homeownership option.

(2) In general, the PHA is not required to permit families (including families that move into the PHA program under portability procedures) to use any of these special housing types, and may limit the number of families using special housing types.

*   *   *   *   *

(c) Program funding for special housing types. (1) HUD does not provide any additional or designated funding for special housing types, or for a specific special housing type (e.g., the homeownership option). Assistance for special housing types is paid from program funding available for the PHA's tenant-based program under the consolidated annual contributions contract.

(2) The PHA may not set aside program funding or program slots for special housing types or for a specific special housing type.

(d) Applicability of requirements. (1) Except as modified by this subpart M, the requirements of other subparts of this part 982 apply to the special housing types.

(2) Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

(3) Housing must meet the requirements of this subpart M for a single special housing type specified by the family. Such housing is not subject to requirements for other special housing types. A single unit cannot be designated as more than one special housing type.

* * * * *

9. Amend § 982.619 as follows:

a. Revise paragraph (a);

b. Redesignate paragraph (d) as paragraph (e); and

c. Add new paragraph (d).

§ 982.619 Cooperative housing.

(a) Assistance in cooperative housing. This section applies to rental assistance for a cooperative member residing in cooperative housing. However, this section does not apply to:

(1) Assistance for a cooperative member under the homeownership option pursuant to § 982.625 through § 982.6[illegible] or

(2) Rental assistance for a family that leases a cooperative housing unit from a cooperative member (such rental assistance is not a special housing type, and is subject to requirements in other subparts of this part 982).

* * * * *

(d) Maintenance. (1) During the term of the HAP contract between the PHA and the cooperative, the dwelling unit and premises must be maintained in accordance with the HQS. If the dwelling unit and premises are not maintained in accordance with the HQS, the PHA may exercise all available remedies, regardless of whether the family or the cooperative is responsible for such breach of the HQS. PHA remedies for breach of the HQS include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of the HAP contract.

(2) The PHA may not make any housing assistance payments if the contract unit does not meet the HQS, unless any defect is corrected within the period specified by the PHA and the PHA verifies the correction. If a defect is life-threatening, the defect must be corrected within no more than 24 hours. For other defects, the defect must be corrected within the period specified by the PHA.

(3) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement between the cooperative member and the cooperative;

(ii) The family fails to pay for any utilities that the cooperative is not required to pay for, but which are to be paid by the cooperative member;

(iii) The family fails to provide and maintain any appliances that the cooperative is not required to provide, but which are to be provided by the cooperative member; or

(iv) Any member of the household or guest damages the dwelling unit or premises (damages beyond ordinary wear and tear).

(4) If the family has caused a breach of the HQS for which the family is responsible, the PHA must take prompt and vigorous action to enforce such family obligations. The PHA may terminate assistance for violation of family obligations in accordance with § 982.552.

(5) Section 982.404 does not apply to assistance for cooperative housing under this section.

*   *   *   *   *

10. Add §§ 982.625 through 982.641 under a new undesignated heading "Homeownership Option" to read as follows:

Homeownership Option

§ 982.625 Homeownership option: General.

(a) The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family.

(b) A family assisted under the homeownership option may be a newly admitted or existing participant in the program.

(c) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and useable by persons with disabilities in accordance with 24 CFR part 8. (See § 982.316 concerning occupancy by a live-in aide.)

(d) The PHA must have the capacity to operate a successful Section 8 homeownership program. The PHA has the required capacity if it satisfies either paragraph (d)(1), (d)(2), or (d)(3) of this section.

(1) The PHA establishes a minimum homeowner downpayment requirement of at least 3 percent for participation in its Section 8 homeownership program, and requires that at least one percent of the minimum downpayment come from

the family's personal resources;

(2) The PHA requires that financing for purchase of a home under its Section 8 homeownership program:

(i) Be provided, insured, or guaranteed by the state or Federal government;

(ii) Comply with secondary mortgage market underwriting requirements; or

(iii) Comply with generally accepted private sector underwriting standards; or

(3) The PHA otherwise demonstrates in its Annual Plan that its has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program.

~~(d) The PHA must demonstrate in its PHA Annual Plan that it has the capacity, or will acquire the capacity, to properly evaluate lender qualifications, loan terms, and other financing aspects associated with the homeownership option.~~

§ 982.626 Homeownership option: Initial requirements.

(a) List of initial requirements. Before commencing homeownership assistance for a family, the PHA must determine that all of the following initial requirements have been satisfied:

(1) The family is qualified to receive homeownership assistance (see § 982.627);

(2) The unit is eligible (see § 982.628); and

(3) The family has satisfactorily completed the PHA program of required pre-assistance homeownership counseling (see § 982.630).

(b) Additional PHA requirements. The PHA may limit homeownership assistance to families or purposes defined by the PHA. The PHA may also prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

(c) Environmental requirements. The PHA is responsible for complying with the authorities listed in § 58.6 of this chapter requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barriers resource system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones.

§ 982.627 Homeownership option: Eligibility requirements for families.

(a) Determination whether family is qualified. The PHA may not provide homeownership assistance for a family unless the PHA determines that the family satisfies all of the following initial requirements at commencement of homeownership assistance for the family:

(1) The family has been admitted to the Section 8 Housing Choice Voucher program, in accordance with subpart E of this part.

(2) The family satisfies any first-time homeowner requirements (described in paragraph (b) of this section).

(3) The family satisfies the minimum income requirement (described in paragraph (c) of this section).

(4) The family satisfies the employment requirements (described in paragraph (d) of this section).

(5) The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option (see paragraph (e) of this section).

(6) Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present homeownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

(7) Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with § 982.630(c).

(8) The family also satisfies any other initial requirements

established by the PHA (see § 982.626(b)). Any such additional requirements must be described in the PHA administrative plan.

(b) First-time homeowner requirements. At commencement of homeownership assistance for the family, the family must be any of the following:

(1) A first-time homeowner (as defined at § 982.4);

(2) A cooperative member (as defined at § 982.4); or

(3) A family of which a family member is a person with disabilities, and use of the homeownership option is needed as a reasonable accommodation so that the program is readily accessible to and usable by such person, in accordance with part 8 of this title.

(c) Minimum income requirements. (1) At commencement of homeownership assistance for the family, the family must demonstrate that the qualified monthly income (gross income), as determined by the PHA in accordance with § 5.609 of this chapter, of the adult family members who will own the home at commencement of homeownership assistance is not less than the Federal minimum hourly wage multiplied by 2,000 hours.

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this chapter), the PHA shall not count any welfare assistance received by the family in determining qualified monthly income under this section.

(ii) The disregard of welfare assistance income under paragraph (b)(2)(i) of this section only affects the determination of minimum monthly income used to determine if a family initially qualifies for commencement of homeownership assistance in accordance with this section, but does not affect:

(A) The determination of income-eligibility for admission to the voucher program;

(B) Calculation of the amount of the family's total tenant payment (gross family contribution); or

(C) Calculation of the amount of homeownership assistance payments on behalf of the family.

(iii) In the case of an elderly family or a disabled family, the PHA shall count welfare assistance in determining qualified monthly income.

(d) Employment requirements. (1) Except as provided in paragraph (d)(2) of this section, the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

(i) Is currently employed on a full-time basis; and

(ii) Has been continuously so employed during the year before commencement of homeownership assistance for the family.

(2) The PHA shall have discretion to determine whether and to what extent brief interruptions are considered to break continuity of employment during the year. The PHA may count successive employment during the year. The PHA may count self-employment in a business.

(3) The employment requirement does not apply to an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this chapter). Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA shall grant an exemption from the employment requirement if the PHA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with part 8 of this title.

(e) Prohibition against mortgage defaults. The PHA shall not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option, and has defaulted on a mortgage securing debt incurred to purchase the home.

§ 982.628 Homeownership option: Eligible units.

(a) Initial requirements applicable to the unit. The PHA must determine that the unit satisfies all of the following requirements:

(1) The unit is eligible. (See § 982.352. Paragraphs (a)(6), (a)(7) and (b) of § 982.352 do not apply.)

(2) The unit was either under construction or already existing at the time the PHA determined that the family was eligible for homeownership assistance to purchase the unit.

(3) The unit is either a one unit property or a single dwelling unit in a cooperative or condominium.

(4) The unit has been inspected by a PHA inspector and by an independent inspector designated by the family (see § 982.631).

(5) The unit satisfies the HQS (see § 982.401 and § 982.631).

(b) PHA disapproval of seller. The PHA may not commence homeownership assistance for occupancy of a home if the PHA has been informed (by HUD or otherwise) that the seller of the home is debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

§ 982.629 Homeownership option: Additional PHA requirements for family search and purchase.

(a) The PHA may establish the maximum time for a family to locate a home to purchase, and to purchase the home.

(b) The PHA may require periodic family reports on the family's progress in finding and purchasing a home.

(c) If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

§ 982.630 Homeownership option: Homeownership counseling.

(a) Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA (pre-assistance counseling).

(b) Suggested topics for the PHA-required pre-assistance counseling program include:

(1) Home maintenance (including care of the grounds);

(2) Budgeting and money management;

(3) Credit counseling;

(4) How to negotiate the purchase price of a home;

(5) How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;

(6) How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;

(7) Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;

(8) Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and

(9) Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

(c) The PHA may adapt subjects covered in pre-assistance counseling (as listed in paragraph (b) of this section to local circumstances and the needs of individual families.

(d) The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

(e) If the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

§ 982.631 Homeownership option: Home inspections and contract of sale.

(a) HQS inspection by PHA. The PHA may not commence homeownership assistance for a family until the PHA has inspected the unit and has determined that the unit passes HQS.

(b) Independent inspection. (1) The unit must also be inspected by an independent professional inspector selected by and paid by the family.

(2) The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

(3) The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

(4) The independent inspector must provide a copy of the inspection report both to the family and to the PHA. The PHA may not commence homeownership assistance for the family until the PHA has reviewed the inspection report of the independent inspector. Even if the unit otherwise complies with the HQS (and may qualify for assistance under the PHA's tenant-based rental voucher program), the PHA shall have discretion to disapprove the unit for assistance under the homeownership option because of information in the inspection report.

(c) Contract of sale. (1) Before commencement of homeownership assistance, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale (see also § 982.626(b)(6)).

(2) The contract of sale must:

(i) Specify the price and other terms of sale by the seller to the purchaser.

(ii) Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser.

(iii) Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser.

(iv) Provide that the purchaser is not obligated to pay for any necessary repairs.

(v) Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under part 24 of this chapter.

§ 982.632 Homeownership option: Financing purchase of home; affordability of purchase.

(a) The PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option. Such PHA requirements may include requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), or concerning terms of financing (for example, a prohibition of balloon payment mortgages, or establishment of a minimum homeowner equity requirement from personal resources).

(b) If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

(c) The PHA may establish requirements or other restrictions concerning refinancing of debt incurred for purchase of the home, or concerning financing for improvement or repair of the home.

(d) The PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or financing for improvements or repairs if the PHA determines that the debt is unaffordable, or if the PHA determines that the lender or the loan terms do not meet PHA qualifications. In making this determination, the PHA may take into account other family expenses, such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses as determined by the PHA.

(e) All PHA financing or affordability requirements must be described in the PHA administrative plan.

§ 982.633 Homeownership option: Continued assistance requirements; Family obligations.

(a) Occupancy of home. Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

(b) Family obligations. The family must comply with the following obligations.

(1) Ongoing counseling. To the extent required by the PHA, the family must attend and complete ongoing homeownership and housing counseling.

(2) Compliance with mortgage. The family must comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

(3) Prohibition against conveyance or transfer of home. (i) So long as the family is receiving homeownership assistance, use and occupancy of the home is subject to § 982.551(h) and (i).

(ii) In the case of assistance for a homeowner, the family may grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

(iii) Upon death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of title by operation of law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members in accordance with § 982.551(h).

(4) Supplying required information. (i) The family must supply required information to the PHA in accordance with § 982.551(b).

(ii) In addition to other required information, the family must supply any information as required by the PHA or HUD concerning:

(A) Any mortgage or other debt incurred to purchase the home, and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), and information on any satisfaction or payment of the mortgage debt;

(B) Any sale or other transfer of any interest in the home; or

(C) The family's homeownership expenses.

(5) Notice of move-out. The family must notify the PHA before the family moves out of the home.

(6) Notice of mortgage default. The family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

(7) Prohibition on homeownership interest on second residence. During the time the family receives homeownership assistance under this subpart, no family member may have any homeownership interest in any other residential property.

(8) Additional PHA requirements. The PHA may establish additional requirements for continuation of homeownership assistance for the family (for example, a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership assistance). The family must comply with any such requirements.

(9) Other family obligations. The family must comply with the obligations of a participant family described in § 982.551. However, the following provisions do not apply to assistance under the homeownership option: § 982.551(c), (d), (e), (f), (g) and (j).

(c) Statement of homeowner obligations. Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD. In the statement, the family agrees to comply with all family obligations under the homeownership option.

§ 982.634 Homeownership option: Maximum term of homeownership assistance.

(a) Maximum term of assistance. Except in the case of a family that qualifies as an elderly or disabled family (see paragraph (c) of this section), the family members described in paragraph (b) of this section shall not receive homeownership assistance for more than:

(1) Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or

(2) Ten years, in all other cases.

(b) Applicability of maximum term. The maximum term described in paragraph (a) of this section applies to any member of the family who:

(1) Has an ownership interest in the unit during the time that homeownership payments are made; or

(2) Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

(c) Exception for elderly and disabled families. (1) As noted in paragraph (a) of this section, the maximum term of assistance does not apply to elderly and disabled families.

(2) In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

(3) If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

(d) Assistance for different homes or PHAs. If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in paragraph (a) of this section.

§ 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.

(a) Amount of monthly homeownership assistance payment. While the family is residing in the home, the PHA shall pay a monthly homeownership assistance payment on behalf of the family that is equal to the lower of:

(1) The payment standard minus the total tenant payment; or

(2) The family's monthly homeownership expenses minus the total tenant payment.

(b) Payment standard for family. (1) The payment standard for a family is the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the size of the home.

(2) If the home is located in an exception rent area, the PHA must use the appropriate payment standard for the exception rent area.

(3) The payment standard for a family is the greater of:

(i) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the commencement of homeownership assistance for occupancy of the home; or

(ii) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

(4) The PHA must use the same payment standard schedule, payment standard amounts, and subsidy standards pursuant to § 982.505 for the homeownership option as for the rental voucher program.

(c) Determination of homeownership expenses. (1) The PHA shall adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

(2) Homeownership expenses for a homeowner may only include amounts allowed by the PHA to cover:

(i) Principal and interest on initial mortgage debt and any mortgage insurance premium incurred to finance purchase of the home and any refinancing of such debt;

(ii) Real estate taxes and public assessments on the home;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home; and

(vii) Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person, in accordance with part 8 of this title.

(3) Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

(i) The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;

(ii) Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt or other mortgage debt;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home; and

(vii) Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home.

(4) If the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium operating charges or

maintenance fees assessed by the condominium or cooperative homeowner association.

(d) Payment to lender or family. The PHA must pay homeownership assistance payments either:

(1) Directly to the family or;

(2) At the discretion of the PHA to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

(e) Automatic termination of homeownership assistance. Homeownership assistance for a family terminates automatically 180 calendar days after the last housing assistance payment on behalf of the family. However, a PHA has the discretion to grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

§ 982.636 Homeownership option: Portability.

(a) General. A family may qualify to move outside the initial PHA jurisdiction with continued homeownership assistance under the voucher program in accordance with this section.

(b) Portability of homeownership assistance. Subject to § 982.353(b) and (c), § 982.552, and § 982.553, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families.

(c) Applicability of Housing Choice Voucher program portability procedures. In general, the portability procedures described in §§ 982.353 and 982.355 apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except to the extent that an administrative function (e.g., issuance of a voucher or execution of a tenancy addendum) is not applicable to the homeownership option.

(d) Family and PHA responsibilities. The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

(e) Continued assistance under § 982.637. Such continued assistance under portability procedures is subject to § 982.637.

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

(a) Move to new unit. (1) A family receiving homeownership assistance may move to a new unit with continued tenant-based assistance in accordance with this section. The family may move either with voucher rental assistance (in accordance with rental assistance program requirements) or with voucher homeownership assistance (in accordance with homeownership option program requirements).

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

(b) Requirements for continuation of homeownership assistance. The PHA must determine that all initial requirements listed in § 982.626 have been satisfied if a family that has received homeownership assistance wants to move to a new unit with continued homeownership assistance. However, the following requirements do not apply:

(1) The requirement for pre-assistance counseling (§ 982.630) is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued assistance under the homeownership option).

(2) The requirement that a family must be a first-time homeowner (§ 982.627) is not applicable.

(c) When PHA may deny permission to move with continued assistance.

The PHA may deny permission to move to a new unit with continued voucher assistance as follows:

(1) Lack of funding to provide continued assistance. The PHA may deny permission to move with continued rental or homeownership assistance if the PHA determines that it does not have sufficient funding to provide continued assistance.

(2) Termination or denial of assistance under § 982.638. At any time, the PHA may deny permission to move with continued rental or homeownership assistance in accordance with § 982.638.

§ 982.638 Homeownership option: Denial or termination of assistance for family.

(a) General. The PHA shall terminate homeownership assistance for the family, and shall deny voucher rental assistance for the family, in accordance with this section.

(b) Denial or termination of assistance under basic voucher program. At any time, the PHA may deny or terminate homeownership assistance in accordance with § 982.552 (Grounds for denial or termination of assistance) or § 982.553 (Crime by family members).

(c) Failure to comply with family obligations. The PHA may deny or terminate assistance for violation of participant obligations described in § 982.551 or § 982.633.

(d) Mortgage default. The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt. The PHA, in its discretion, may permit the family to move to a new unit with continued voucher rental assistance. However, the PHA must deny such permission, if:

(1) The family defaulted on an FHA-insured mortgage; and

(2) The family fails to demonstrate that:

(i) The family has conveyed title to the home, as required by HUD, to HUD or HUD's designee; and

(ii) The family has moved from the home within the period established or approved by HUD.

§ 982.639 Homeownership option: Administrative fees.

The ongoing administrative fee described in § 982.152(b) is paid to the PHA for each month that homeownership assistance is paid by the PHA on behalf of the family.

§ 982.640 Homeownership option: Recapture of homeownership assistance.

(a) General. The PHA shall recapture a percentage of the homeownership assistance provided to the family upon the family's sale or refinancing of the home.

(b) Securing the PHA's right of recapture. Upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance in accordance with this section. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

(c) Recapture amount for sales. In the case of the sale of the home, the recapture shall be in an amount equalling the lesser of:

(1) The amount of homeownership assistance provided to the family, adjusted as described in paragraph (f) of this section; or

(2) The difference between the sales price and purchase price of the home, minus:

(i) The costs of any capital expenditures;

(ii) The costs incurred by the family in the sale of the home (such as sales commission and closing costs);

(iii) The amount of the difference between the sales price and purchase price that is being used, upon sale, towards the purchase of a new home under the Section 8 homeownership option; and

(iv) Any amounts that have been previously recaptured, as a result of refinancing, in accordance with paragraph (d) of this section.

(d) Recapture amount for refinancing. In the case of a refinancing of the home, the recapture shall be in an amount equalling the lesser of:

(1) The amount of homeownership assistance provided to the family, adjusted as described in paragraph (f) of this section; or

(2) The difference between the current mortgage debt and the new mortgage debt; minus:

(i) The costs of any capital expenditures;

(ii) The costs incurred by the family in the refinancing of the home (such as closing costs); and

(iii) Any amounts that have been previously recaptured as a result of refinancing.

(e) Use of sales price in determining recapture amount. The recapture amount shall be determined using the actual sales price of the home, unless the sale is to an identity-of-interest entity. In the case of identity-of-interest transactions, the PHA shall establish a sales price based on fair market value.

(f) Automatic reduction of recapture amount. The amount of homeownership assistance subject to recapture will automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. At the end of the 10 year period, the amount of homeownership assistance subject to recapture will be zero.

§ 982.641 Homeownership option: Applicability of other requirements.

(a) General. The following types of provisions (located in other subparts of this part 982) do not apply to assistance under the homeownership option:

(1) Any provisions concerning the Section 8 owner or the HAP contract between the PHA and owner;

(2) Any provisions concerning the assisted tenancy or the lease between the family and the owner;

(3) Any provisions concerning PHA approval to lease a unit;

(4) Any provisions concerning rent to owner or reasonable rent; and

(5) Any provisions concerning the issuance or term of a certificate or voucher.

(b) Subpart G requirements. The following provisions of this part 982, subpart G do not apply to assistance under the homeownership option:

(1) Section 982.302 (Issuance of voucher; Requesting PHA approval of assisted family);

(2) Section 982.303 (Term of voucher);

(3) Section 982.305 (PHA approval of assisted tenancy);

(4) Section 982.306 (PHA disapproval of owner);

(5) Section 982.307 (Tenant screening);

(6) Section 982.308 (Lease and tenancy);

(7) Section 982.309 (Term of assisted tenancy);

(8) Section 982.310 (Owner termination of tenancy);

(9) Section 982.311 (When assistance is paid) (except that § 982.311(c)(3) is applicable to assistance under the homeownership option);

(10) Section 982.313 (Security deposit: Amounts owed by tenant); and

(11) Section 982.314 (Move with continued tenant-based assistance) (except that paragraphs § 982.314(c) and (d)(2) are applicable).

(c) Subpart H requirements. The following provisions of this part 982, subpart H do not apply to assistance under the homeownership option:

(1) Section 982.352(a)(6) (Prohibition of owner-occupied assisted unit);

(2) Section 982.352(b) (PHA-owned housing); and

(3) Those provisions of § 982.353(b)(1),(2), and (3) (Where family can lease a unit with tenant-based assistance) and § 982.355 (Portability: Administration by receiving PHA) that are inapplicable per § 982.636;

(d) Subpart I requirements. The following provisions of this part 982, subpart I do not apply to assistance under the homeownership option:

(1) Section 982.403 (Terminating HAP contract when unit is too small);

(2) Section 982.404 (Maintenance: Owner and family responsibility; PHA remedies); and

(3) Section 982.405 (PHA initial and periodic unit inspection).

(e) Subpart J requirements. ~~Except for § 982.455 (Automatic termination of HAP contract), t~~The requirements [illegible] part 982, subpart J (Housing Assistance Payments Contract and [illegible] Responsibility) (§§ 982.451-4576) do not apply to assistance under the homeownership option.

(f) Subpart K requirements. Except for those sections listed below, the requirements of this part 982, subpart K (Rent and Housing Assistance Payment) (§§ 982.501-521) do not apply to assistance under the homeownership option:

(1) Section 982.504 (Maximum subsidy; FMR/exception rent limit);

(2) Section 982.516 (Family income and composition: Regular and interim reexaminations); and

(3) Section 982.517 (Utility allowance schedule).

(g) Subpart L requirements. The following provisions of 24 CFR part 982, subpart L, do not apply to assistance under the homeownership option:

(1) Section 982.551(c) (HQS breach caused by family);

(2) Section 982.551(d) (Allowing HQS inspection); and

(3) Section 982.551(j) (Interest in unit).

Dated: ________________

Harold Lucas, Assistant Secretary for Public and Indian Housing

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