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Section 8 Homeownership [binder] [1]

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Section 8 Homeownership Final Rule

**Section 8
Homeownership
Final Rule**



Margy Waller

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Record Type: Record

To: Andrea Kane/OPD/EOP

cc:

Subject: new income requirement

(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. **A PHA, however, shall approve a family for participation that cannot otherwise demonstrate compliance with this paragraph, if the PHA determines that the family's circumstances indicate reasonable prospects to participate successfully in the homeownership option.**

1 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 24 CFR Parts 5, 903 and 982

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

4 RIN: 2577-AB90

5 Section 8 Homeownership Program

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

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14 ACTION: Final rule.

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16 SUMMARY: This final rule implements the "homeownership option" authorized by
17 section 8(y) of the United States Housing Act of 1937, as amended by section
18 555 of the Quality Housing and Work Responsibility Act of 1998. Under the
19 section 8(y) homeownership option, a public housing agency may provide tenant-
20 based assistance to an eligible family that purchases a dwelling unit that
21 will be occupied by the family. This final rule follows publication of an
22 April 30, 1999 proposed rule, and takes into consideration the public comments
23 received on the proposed rule.

24
25 DATES: Effective Date: [Insert date 30 days after date of publication in the
26 FEDERAL REGISTER.]

27
28 FOR FURTHER INFORMATION: Gerald J. Benoit, Office of Public and Indian
29 Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh
30 Street, SW, Washington, DC 20410; telephone (202) 708-0477. (This is not a
31 toll-free number.) Hearing or speech-impaired individuals may access this
32 number via TTY by calling the toll-free Federal Information Relay Service at
33 1-800-877-8339.

34
35 SUPPLEMENTARY INFORMATION:

36 I. Introduction

37 On April 30, 1999 (64 FR 23488), HUD published a proposed rule for
38 public comment to implement the "homeownership option" under section 8(y) of

1 the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) (referred to as
2 the "1937 Act"), as amended by section 555 of the Quality Housing and Work
3 Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act;
4 Pub.L. 105-276, approved October 21, 1998; 112 Stat. 2461, 2518) (referred to
5 as the "Public Housing Reform Act"). Section 8(y) authorizes Section 8
6 tenant-based assistance for an eligible family that occupies a home purchased
7 and owned by members of the family.

8 The April 30, 1999 rule proposed to implement the section 8(y)
9 homeownership option by adding a new "special housing type" under subpart M of
10 HUD's regulations at 24 CFR part 982. The part 982 regulations, which were
11 amended by final rule published on October 21, 1999 (64 FR 56894), implement
12 the statutory merger of the Section 8 tenant-based certificate and voucher
13 programs into a new Housing Choice Voucher program. Subpart M of 24 CFR part
14 982 describes program requirements for alternatives to the basic Housing
15 Choice Voucher program.

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

26 As required by law, the homeownership option is not available for units
27 receiving section 8 project-based assistance. By law, homeownership under
28 section 8(y) may only be provided for families receiving "tenant-based
29 assistance" (42 U.S.C. 1437f(y)(1)). Integral to the tenant-based nature of
30 the housing choice voucher program is the freedom-of-choice afforded to the
31 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. 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.

A. General

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

1 requirements, or comply with generally accepted private sector underwriting
2 standards; or

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

6 At the briefing of families selected to participate in the tenant-based
7 Section 8 program, the PHA must discuss any homeownership option. Family
8 participation in the homeownership program is voluntary. Although the
9 homeownership program is open to both Section 8 applicants and participants,
10 not every Section 8 tenant-based family may receive homeownership assistance.

11 The PHA may limit the number of homeownership families and there are
12 statutory family eligibility requirements such as a minimum level of income
13 and a history of full-time employment. (The employment history requirement is
14 not applicable to elderly and disabled families, and there is a modified
15 income requirement for elderly and disabled families.) The program is
16 generally limited to first-time homeowners. The PHA may add other local
17 eligibility requirements such as participation in the Family Self-Sufficiency
18 (FSS) program.

19 Once a family has been determined by the PHA to be eligible for Section
20 8 homeownership assistance, the family must attend homeownership counseling
21 sessions. The counseling may be done by PHA staff or another entity such as a
22 HUD-approved housing counseling agency.

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

30 A home may be purchased under the homeownership option if, at the time
31 the PHA determines that the family is eligible to purchase the home with

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

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

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

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

1 the Section 8 homeownership program.

2 The homeownership housing assistance payment will equal the lower of (1)
3 the payment standard minus the total tenant payment or (2) the monthly
4 homeownership expenses minus the total tenant payment. The family is
5 responsible for the monthly homeownership expenses not reimbursed by the
6 housing assistance payment. (Total tenant payment is higher of the minimum
7 rent, 10 percent of monthly income, 30 percent of monthly adjusted income, or
8 the welfare rent.) The PHA must use the utility allowance schedule and
9 payment standard schedules applicable to the Section 8 voucher rental program.

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

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

24 The maximum term for homeownership assistance does not apply to an
25 elderly family or a disabled family. In the case of an elderly family, this
26 exception is only applied if the family qualifies as an elderly family at the
27 commencement of homeownership assistance. In the case of a disabled family,
28 this exception applies if at any time during receipt of homeownership
29 assistance the family qualifies as a disabled family. If, during the course
30 of homeownership assistance, the family ceases to qualify as a disabled or
31 elderly family, the maximum term becomes applicable from the date

1 homeownership assistance commenced. However, such a family must be provided
2 at least 6 months of homeownership assistance after the maximum term becomes
3 applicable (provided the family is otherwise eligible to receive Section 8
4 homeownership assistance).

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

13 A PHA opting to administer the Section 8 homeownership program must
14 establish local homeownership policies. The following policies must be
15 described in the PHA administrative plan: any additional PHA requirements for
16 participation in its Section 8 homeownership program (§ 982.626(b)); PHA
17 maximum times to locate and purchase a home (§ 982.629(a)); PHA policy about
18 issuing the family a rental voucher if the family does not find a suitable
19 house to buy (§§ 982.629(c)); any minimum cash downpayment or equity
20 requirements (§ 982.632); any requirements for financing purchase of a home,
21 including requirements concerning qualification of lenders (for example,
22 prohibition of seller financing or case-by-case approval of seller financing),
23 terms of financing (for example, a prohibition of balloon payment mortgages
24 and establishment of a minimum homeowner equity requirement), and financing
25 affordability (§ 982.632); PHA policy for payment of the HAP to the family or
26 lender (§ 982.635(d)); any PHA requirements for continuation of homeownership
27 assistance (§ 982.633(b)(8)); PHA policy for determining the amount of
28 allowable homeownership expenses (§ 982.635(c)); and any PHA policies that
29 prohibit more than one move by the family during any one year period (§
30 982.637(b)(3)).

31 B. Who is Assisted

1 1. General. The homeownership option is used to assist families in two
2 types of housing:

3 • A unit owned by the family - One or more family members hold title to
4 the home.

5 • A cooperative unit - One or more family members hold membership
6 shares in the cooperative.

7 2. Assistance for homeowner. Before enactment of Section 8(y), Section
8 assistance could be paid on behalf of a renter or cooperative member, but
9 not for a family that owns fee title to its home. Section 8 rental assistance
10 terminates when the family takes title to the home. By contrast, Section 8(y)
11 is specifically designed to authorize assistance for a "homeowner" - a family
12 that owns title to the home.

13 The law provides that the public housing agency may provide assistance
14 for:

15 • A "first-time homeowner"; and

16 • A family that owns or is acquiring shares in a cooperative.

17 By law and this rule, the homeownership option is designed to promote
18 and support homeownership by a "first-time" homeowner - a family that moves
19 for the first time from rental housing to a family-owned home. Section 8
20 payments supplement the family's own income to facilitate the transition from
21 rental to homeownership. The initial availability of these assistance
22 payments helps the family pay the costs of homeownership, and may provide
23 additional assurance for a lender, so that the family can finance purchase of
24 the home.

25 Section 8 homeownership assistance for cooperative homeowners is
26 specifically authorized for both a family that is a first time cooperative
27 homeowner and a family that owned its cooperative unit prior to receiving
28 Section 8 assistance. Cooperative homeowners were eligible for tenant-based
29 assistance prior to passage of the Public Housing Reform Act.

30 To qualify as a "first-time homeowner," the assisted family may not
31 include any person who owned a "present ownership interest" in a residence of

1 any family member during the three years before the commencement of
2 homeownership assistance for the family (regulatory definition at § 982.4;
3 statutory definition at 42 U.S.C. 1437f(y)(7)(A)). Such interest includes
4 ownership of title or of cooperative membership shares. This rule defines the
5 term "first-time homeowner" to include a single parent or displaced homemaker
6 who, while married, owned a home with his or her spouse, or resided in a home
7 owned by his or her spouse.

8 The restriction to "first-time" homeowners is intended to direct
9 homeownership assistance to "new" homeowners who may be unable to purchase a
10 home without this assistance, but to discourage use of Section 8 subsidy on
11 behalf of families who have achieved homeownership independently, without
12 benefit of the Federal Section 8 subsidy. In addition, the PHA may not
13 commence homeownership assistance for a family if any family member has
14 previously received assistance under the homeownership option, and has
15 defaulted on a mortgage securing debt incurred to purchase the home (see §
16 982.627(e) of this final rule).

17 3. Assistance for cooperative member. Section 8(y) authorizes
18 homeownership assistance for a family that "owns or is acquiring shares in a
19 cooperative." Thus, the law allows assistance for a family that already owns
20 cooperative shares before commencement of Section 8 homeownership assistance,
21 not just for a family that acquires cooperative shares for the first time with
22 the support of such assistance. In this respect, the law treats ownership of
23 cooperative membership different from ownership of title to the home. In the
24 latter case, the law authorizes assistance for a first time homeowner. The
25 rule specifies that cooperative membership shares may be purchased at or
26 before commencement of homeownership assistance (see the definition of
27 "membership shares" at § 982.4).

28 Before this rule, HUD has provided essentially the same Section 8 rental
29 assistance for a cooperative member as for a family that chooses to rent a
30 unit in conventional rental housing. Since the origin of the Section 8
31 program, the law has provided that with respect to members of a cooperative,

1 "rent" means the charges under the occupancy agreements between the members
2 and the cooperative (42 U.S.C. 1437f(f)(5)). Thus Section 8 assistance is
3 paid to cover the difference between the cooperative occupancy charges and the
4 income-based tenant rent.

5 Under this final rule, the PHA may provide assistance for a cooperative
6 member either under the new homeownership option or under the special
7 procedures for cooperative housing within the Section 8 tenant-based rental
8 program (§ 982.619). Each form of assistance is designated as a separate
9 special housing type under the Section 8 voucher program. The PHA may elect
10 to offer either or both of these forms of cooperative assistance in its
11 voucher program, and to define the appropriate role of each available form of
12 cooperative assistance in the local Section 8 program.

13 In the new homeownership option, Section 8 assistance is paid on behalf
14 of a cooperative member, but there is no requirement that the cooperative
15 enter into any agreement or any direct relationship with the PHA that provides
16 Section 8 assistance for the cooperative member. The cooperative is not asked
17 to modify any ordinary requirement for cooperative membership or occupancy,
18 nor asked to modify any requirement concerning assessment or collection of the
19 cooperative carrying charge, maintenance of the unit or sanctions for
20 violation of cooperative requirements.

21 For clarity, in describing requirements for homeownership assistance to
22 a cooperative member, the new rule supplements existing definitions. The term
23 "cooperative" refers to housing owned by a corporation or association, and
24 where a member of the corporation or association has the right to reside in a
25 particular unit, and to participate in management of the housing (§ 982.4).
26 The rule also adds the following two new definitions:

- 27 • Cooperative member. A family of which one or more members owns
28 membership shares in a cooperative.
- 29 • Membership shares. Shares in a cooperative. By owning such
30 cooperative shares, the share-owner has the right to reside in a particular
31 unit in the cooperative, and the right to participate in management of the

1 housing.

2 Prior to the enactment of the Public Housing Reform Act, a family could
3 only receive assistance in a cooperative that had adopted requirements to
4 maintain continued affordability for lower income families after transfer of a
5 member's interest. There is now no such statutory affordability requirement
6 for Section 8 tenant-based assistance to cooperative residents - whether such
7 assistance is provided under the rental assistance program or under the new
8 Section 8(y) homeownership option - and there is no such requirement under
9 this rule.

10 HUD believes that such a continuing affordability requirement would
11 restrict housing choice of Section 8 families among available cooperative
12 units. Such a requirement would also diminish a major advantage of
13 homeownership - the incentive for an assisted family to maintain and improve
14 the housing and to benefit from appreciation upon a future sale of the home.
15 This rule removes the federal mandate for existing continuing affordability
16 requirements for rental assistance in cooperative housing.

17 In addition, this rule modifies the allocation of maintenance
18 responsibility between the cooperative and the family. In the regular rental
19 assistance program, the owner is responsible for most maintenance of a unit.
20 Under the old rule, this principle also applies to rental assistance for
21 Section 8 cooperative housing. However, in a conventional cooperative, the
22 member is generally responsible for maintenance of the individual apartment,
23 and the cooperative entity is only responsible for maintenance of common areas
24 and systems. The cooperative agreement defines the division of maintenance
25 obligations between the member and the cooperative.

26 The existing regulation is amended by this rule to reflect the normal
27 division of maintenance responsibility in cooperative housing for which rental
28 (not homeownership) assistance is being provided (§ 982.619(d)(3)). The
29 revised rule provides that the family is responsible for a breach of the HQS
30 caused by failure to perform maintenance in accordance with the cooperative
31 occupancy agreement between the family and the cooperative. The PHA must take

1 prompt and vigorous action to enforce the family maintenance obligation, and
2 may terminate assistance for failure to perform maintenance in accordance with
3 the cooperative occupancy agreement (§ 982.619(d)(4)).

4 During the term of the HAP contract between the PHA and the cooperative,
5 the unit and premises must be maintained in accordance with the Section 8 HQS.

6 If the contract unit and premises are not properly maintained, the PHA may
7 exercise all available remedies, regardless of whether the family or the owner
8 is responsible for such breach of the HQS. PHA remedies for breach of the HQS
9 include recovery of overpayments, suspension of housing assistance payments,
10 abatement or other reduction of housing assistance payments, termination of
11 housing assistance payments and termination of the HAP contract
12 (§ 982.619(d)(1)).

13 In the new homeownership cooperative option under Section 8(y), there is
14 no HAP contract (between the PHA and the cooperative as unit "owner") and no
15 lease (between the cooperative and the family). The unit is only inspected
16 before the commencement of assistance. There is no requirement that the
17 family or cooperative assure that the unit continues to satisfy HQS during the
18 continuation of assisted occupancy. Consequently, there is no need to specify
19 any allocation of maintenance responsibility between the cooperative and the
20 family.

21 4. Lease-purchase agreements. The law and rule explicitly permit
22 Section 8 homeownership assistance for a family that purchases a home that the
23 family previously occupied under a "lease-purchase agreement" - generally a
24 lease with option to purchase. Section 8(y) provides that the PHA may provide
25 Section 8 homeownership assistance for an eligible family that purchases "a
26 unit under a lease-purchase agreement" (42 U.S.C. 1437f(y)(1)).

27 Prior to enactment of the Public Housing Reform Act, a family that
28 received Section 8 rental subsidy could exercise an option to purchase the
29 unit under a lease-purchase agreement. However, there were problems in
30 applying the rent reasonableness requirements and, as noted above, Section 8
31 rental subsidy terminated when the family took title to the home. Thus the

1 prospective loss of subsidy discouraged the family from taking title, and
2 moving from rental to homeownership. However, Section 8(y) now provides a
3 vehicle for continuation of Section 8 assistance after the family takes title
4 to the home.

5 To qualify as a first-time homeowner (as noted above) the family may not
6 have owned title to a principal residence in the last three years. The rule
7 specifies, however, that the right to purchase title under a lease-purchase
8 agreement does not constitute a prohibited "present ownership interest." A
9 family that holds an option to purchase may exercise the option and receive
10 assistance under the new homeownership option.

11 A new § 982.317 is added to describe the requirements for lease-purchase
12 agreements. The housing assistance payment for a lease-purchase unit may not
13 exceed the amount that would be paid on behalf of the family if the rental
14 unit was not subject to a lease-purchase agreement. Any "homeownership
15 premium" included in the rent to the owner that would result in a higher
16 subsidy amount than would otherwise be paid by the PHA must be absorbed by the
17 family. "Homeownership premium" is defined as an increment of value
18 attributable to the value of the lease-purchase right or agreement such as an
19 extra monthly payment to accumulate a downpayment or reduce the purchase
20 price. Families are permitted to pay an extra amount out-of-pocket to the
21 owner for purchase related expenses.

22 Section 982.317 also provides that in determining whether the rent to
23 owner for a unit subject to a lease-purchase agreement is a reasonable amount,
24 any "homeownership premium" paid by the family to the owner must be excluded
25 when the PHA determines rent reasonableness.

26 Lease-purchase agreements are considered rental, and all the normal
27 tenant-based Section 8 rental rules are applicable. The family will be
28 subject to the homeownership regulatory requirements at the time the family is
29 ready to exercise the homeownership option under the lease-purchase agreement.

30 At that point in time, the PHA will determine whether the family is eligible
31 for Section 8 homeownership assistance (e.g., whether the family meets the

1 income and employment thresholds and any other criteria established by the
2 PHA). If determined eligible for a homeownership voucher, the family will
3 then arrange for an independent home inspection, attend counseling sessions,
4 and obtain financing. Homeownership assistance will begin when the family
5 purchases the home and after all of the requirements of the homeownership
6 option are met.

7 C. How to Qualify for Homeownership Assistance

8 1. General. To qualify for assistance under the homeownership option,
9 a family must meet the general requirements for admission to the PHA's Section
10 8 tenant-based voucher program, and additional special requirements for
11 homeownership assistance (§ 982.627). The PHA may not provide homeownership
12 assistance for a family unless the PHA determines that the family satisfies
13 all of the following initial requirements at commencement of homeownership
14 assistance for the family:

15 • The family satisfies the minimum income requirements described in §
16 982.627(c) of the final rule;

17 • The family satisfies the employment requirements described in §
18 982.627(d) of the final rule;

19 • The family has not defaulted on a mortgage securing debt to purchase
20 a home under the homeownership option (see § 982.627(e) of the final rule);

21 • Except for cooperative members who have acquired cooperative
22 membership shares prior to the commencement of homeownership assistance, no
23 family member has a present homeownership interest in a residence at the
24 commencement of homeownership assistance for the purchase of any home;

25 • Except for cooperative members who have acquired cooperative
26 membership shares prior to the commencement of homeownership assistance, the
27 family has entered into a contract of sale in accordance with § 982.630(c);

28 • The family satisfies any other initial requirements established by
29 the PHA.

30 2. Minimum income requirement. To enter the Section 8 voucher program,
31 a family must be income-eligible (i.e., below the maximum income cutoff).

1 However, to qualify for the homeownership option in the voucher program, the
2 family must demonstrate sufficient income to meet a minimum income standard,
3 which is intended to assure that a family will have sufficient income to pay
4 homeownership and other family expenses not covered by the Section 8 subsidy.

5 Section 8(y) provides that a family may not receive homeownership
6 assistance unless the family demonstrates that gross monthly income is at
7 least two times the voucher "payment standard" or an "other amount"
8 established by the Secretary (Section 8(y) (1) (B), 42 U.S.C. 1437f(y) (1) (B)).

9 At the request of several public commenters, the final rule establishes
10 a national minimum income requirement that is equal to 2,000 hours of yearly
11 full-time work at the Federal minimum wage. In response to public comment,
12 the final rule also provides that the adult family members who will own the
13 home at the commencement of the homeownership assistance (as opposed to only
14 the head of household or spouse) must have qualified monthly income (gross
15 income) that is not less than the minimum income requirement.

16 The law does not specify whether the minimum income requirement is only
17 applied at initial qualification for commencement of homeownership assistance,
18 or is also a continuing requirement that must be maintained so long as the
19 family is receiving assistance under the homeownership option. (By contrast,
20 the law explicitly provides that the statutory employment requirement only
21 applies at the time the family initially receives homeownership assistance.)
22 HUD has decided that any minimum income requirement will only be applied to
23 determine initial qualification to purchase a particular home, not as a
24 continuing requirement. This policy gives assurance to the family, and
25 possibly to a potential mortgage lender, that the stream of homeownership
26 assistance payments will not be disrupted because of a drop in family income.

27 Any minimum income requirement will only apply again if the family purchases
28 a subsequent home with Section 8 homeownership assistance.

29 The law provides that the income counted in meeting any minimum income
30 requirement under the homeownership option must come from sources other than
31 welfare assistance. Thus, PHAs may limit homeownership assistance to families

1 with substantial non-welfare income available to pay housing and non-housing
2 costs. However, the law provides that HUD may count welfare assistance in
3 determining availability of voucher homeownership assistance for an elderly or
4 disabled family (in which the household head or spouse is an elderly or
5 disabled person). (The term "welfare assistance" is defined in HUD's
6 regulations at § 5.603, thereby identifying the types of income that may not
7 be included in determining whether a family meets the homeownership minimum
8 income standard.)

9 The rule also clarifies that the requirement to disregard welfare
10 assistance income only applies in determining whether a family has the minimum
11 income to qualify for homeownership assistance. However, welfare assistance
12 income is counted for other program purposes: in determining income-
13 eligibility for admission to the voucher program, in calculating the amount of
14 the family's total tenant payment (gross family contribution); and in
15 calculating the amount of the monthly homeownership assistance payment for a
16 family assisted under the homeownership option.

17 Under the law, HUD may permit PHAs to count welfare assistance income of
18 an "elderly family" or a "disabled family" - a family whose head or spouse is
19 elderly or disabled (definitions of these terms are found in section
20 3(b)(3)(B) of the 1937 Act; 42 U.S.C. 1437a(b)(3)(B)) - in determining whether
21 a family has the minimum income to qualify for homeownership assistance. On
22 consideration of this issue, and recognizing the special needs of such
23 families, the rule requires that the PHA count welfare assistance of an
24 elderly or disabled family in determining whether the family meets the minimum
25 income requirement for homeownership assistance. This requirement to count
26 welfare assistance in determining whether a family has the minimum income to
27 qualify for homeownership assistance only applies, however, to families which
28 satisfy the statutory definition of an elderly or disabled family. In
29 particular, as required by the law, the requirement to count welfare
30 assistance income does not apply in the case of a family that includes a
31 disabled person other than the household head or spouse (and where the

household head or spouse are not elderly or disabled).

3. Family employment. Section 8(y) provides that, except as provided by HUD, the family must be able to demonstrate, at the time that the family initially receives homeownership assistance, that one or more adult members of the family have achieved employment for the time period established by HUD (42 U.S.C. 1437f(y)(1)(B)).

The final rule requires that the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

- Is currently employed on a full-time basis (the term "full-time employment" is defined to mean not less than an average of 30 hours per week); and
- Has been continuously so employed during the year before commencement of homeownership assistance for the family.

The final rule provides that the PHA has the discretion to determine whether (and to what extent) an 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.

The employment requirement does not apply to an elderly family or a disabled family. Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA must 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.

4. Discussion of other requirements

a. Homeownership counseling. Section 8(y) provides that a family that receives assistance under the homeownership option must participate in a homeownership and housing counseling program provided by the PHA (42 U.S.C. 1437f(y)(1)(D)). The rule provides that, before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete

1 the pre-assistance homeownership and housing counseling program required by
2 the PHA (pre-assistance counseling) (§ 982.630). Suggested topics for the
3 PHA-required pre-assistance counseling program include:

- 4 • Home maintenance (including care of the grounds);
- 5 • Budgeting and money management;
- 6 • Credit counseling;
- 7 • How to negotiate the purchase price of a home;
- 8 • How to obtain homeownership financing and loan preapprovals,
9 including a description of types of financing that may be available, and the
10 pros and cons of different types of financing;
- 11 • How to find a home, including information about homeownership
12 opportunities, schools, and transportation in the PHA jurisdiction;
- 13 • Advantages of purchasing a home in an area that does not have a high
14 concentration of low-income families and how to locate homes in such areas;
- 15 • Information on fair housing, including fair housing lending and local
16 fair housing enforcement agencies; and
- 17 • Information about the Real Estate Settlement Procedures Act (12
18 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how
19 to identify and avoid loans with oppressive terms and conditions.

20 The PHA may adapt subjects covered in pre-assistance counseling to local
21 circumstances and the needs of individual families. The PHA may also offer
22 additional counseling after commencement of homeownership assistance (ongoing
23 counseling). If the PHA offers a program of ongoing counseling for
24 participants in the homeownership option, the PHA has the discretion to
25 determine whether the family is required to participate in the ongoing
26 counseling.

27 The counseling may be provided by the PHA, another entity such as a HUD-
28 approved housing counseling agency, or by both the PHA and another entity.
29 HUD-approved housing counseling agencies provide free counseling. The HUD
30 field office will provide the PHA with a list of the HUD-approved counseling
31 agencies. If the PHA is not using a HUD-approved housing counseling agency to

1 provide the counseling for families participating in the homeownership option,
2 the PHA should ensure that its counseling program is consistent with the
3 homeownership counseling provided under HUD's Housing Counseling program.

4 Experience with low-income homeownership programs has demonstrated that
5 quality counseling is imperative for successful homeownership and prevention
6 of mortgage defaults. In addition, counseling will assist families in making
7 informed decisions when selecting the home they wish to purchase.

8 b. Financing purchase of home. Families selected to participate in the
9 Section 8 homeownership program must secure their own financing. If the
10 family applies for a mortgage or loan (including an FHA mortgage), all regular
11 lender underwriting and property inspection requirements apply.

12 The rule provides that a PHA may establish requirements for financing
13 purchase of a home to be assisted under the homeownership option (§ 982.632).

14 All PHA financing or affordability requirements must be described in the PHA
15 administrative plan. The PHA may also set requirements concerning
16 qualifications of lenders and terms of financing. For example, a PHA may
17 determine that mortgages with balloon payments and certain kinds of variable
18 interest rate loans are not in the best interest of the family because it is
19 unlikely the family could afford the payments when the balloon comes due or
20 interest rates rise. In addition, the PHA could opt to prohibit seller
21 financing, or to only allow seller financing in cases when the seller is a
22 nonprofit or the purchase price can be clearly supported by an independent
23 appraisal.

24 Another purpose of the PHA financing review would be to determine
25 whether the monthly mortgage or loan payment is affordable after considering
26 other family expenses. The PHA may disapprove proposed financing, refinancing
27 or other debt if the PHA determines that the debt is unaffordable. PHAs may
28 wish to establish minimum initial downpayment requirements to ensure that the
29 family has a personal financial stake in the home, thus helping to minimize
30 mortgage loan defaults (for example, the PHA may require that the family use
31 its own resources to make the entire initial downpayment, or a percentage of

1 the initial downpayment).

2 c. Home inspections. Two kinds of physical inspections are required in
3 the homeownership option (in addition to, and separate from, any lender
4 required inspections): an HQS inspection by the PHA and an independent
5 professional home inspection by an inspector that is used in the private
6 market by homebuyers. (§ 982.631).

7 The PHA inspection is the normal initial HQS inspection conducted by the
8 PHA for the tenant-based rental assistance program. This inspection will
9 indicate the current physical condition of the unit and any repairs necessary
10 to ensure that the unit is safe and otherwise habitable. The PHA HQS
11 inspection does not include an assessment of the adequacy and life span of the
12 major building components, building systems, appliances and other structural
13 components.

14 The only difference between the HQS inspection requirements for the
15 tenant-based rental and homeownership programs is that the PHA is not required
16 by the regulation to conduct annual inspections. The exemption from annual
17 HQS homeownership inspections is authorized by the statute. The initial
18 (prior to the commencement of housing assistance) HQS inspection is the only
19 PHA inspection required for homeownership units during the entire time the
20 family is receiving Section 8 homeownership assistance.

21 The other inspection required by this final rule is a statutory
22 requirement that is consistent with private real estate practice. The
23 independent professional home inspection is conducted by a private market home
24 inspector (not PHA staff) that is experienced and qualified to conduct
25 prepurchase inspections for homebuyers. The purpose of the home inspection is
26 the identification of home defects and an assessment of the adequacy and life
27 span of the major building components, building systems, appliances and other
28 structural components. The requirement for an inspection arranged by the
29 buyer and satisfactory to the buyer is a typical contingency clause in
30 contracts of sale. The Section 8 family selects the home inspector and pays
31 the home inspector's fees. (The source of funds for family payment of the

1 home inspection may be a gift, family savings or an inheritance, or sources
2 other than family savings.) A copy of the inspection report is provided to
3 the family and the PHA.

4 Although the PHA may not require the family to use a particular
5 inspector, the PHA may establish standards for qualification of the home
6 inspector selected by the family. For example, the PHA may require the use of
7 a home inspector certified by the American Society of Home Inspectors, or a
8 similar national organization.

9 The PHA must review the home inspector's report to determine whether
10 repairs are necessary prior to purchase, and to generally assess whether the
11 purchase transaction makes sense in light of the overall condition of the home
12 and the likely costs of repairs and capital expenditures. For example, the
13 home inspector's report might reveal foundation instability, and a defective
14 roof and heating system that needs immediate replacement at great cost.
15 Confronted with these facts the PHA would discuss the inspection results with
16 the family and decide whether to disapprove the unit for assistance under the
17 homeownership option because of the major physical problems and substantial
18 correction costs, or whether it is feasible to have the necessary repairs
19 accomplished prior to sale.

20 d. Switching from Section 8 homeownership voucher assistance to rental
21 voucher assistance, and vice-versa, after a mortgage default and at other
22 times. There are a number of circumstances under which a family may switch
23 between rental and homeownership assistance under the voucher program.
24 Various scenarios are described below.

25 • A Section 8 participant receiving voucher assistance may request a
26 PHA operating a homeownership program to determine whether the family is
27 eligible for Section 8 homeownership assistance. If the family is determined
28 eligible for homeownership assistance, the PHA may authorize the family to
29 search for a home to purchase. The family would continue to receive rental
30 assistance until the family vacates the rental unit (consistent with the
31 lease).

1 • A Section 8 applicant selected from the PHA waiting list goes to the
2 briefing and learns of the homeownership option. The PHA determines the
3 family is eligible for homeownership and the family is given two months to
4 find a home to purchase. At the end of the two months the PHA extends the
5 search period for an additional month because the family has found a unit.
6 However, the purchase never occurs due to problems qualifying for a loan. The
7 family opts to rent an apartment and try homeownership at a later time after
8 they have increased their savings. The PHA issues the family a rental
9 voucher.

10 • The family purchases a home under the Section 8 homeownership option.
11 After several years the family decides that they prefer to live in a rental
12 apartment. If there is no mortgage loan default and the family has met all
13 obligations under the Section 8 program, the PHA may issue the family a rental
14 voucher. The family must sell the home before the PHA may provide rental
15 assistance. If there is a default on a mortgage (whether FHA-insured or non-
16 FHA), the PHA may exercise the PHA option to issue the family a rental voucher
17 only if the family vacates the home and conveys the title in accordance with §
18 982.638(d) (assuming the family has met all the family obligations under the
19 Section 8 program other than not causing a mortgage default).

20 e. Portability. Generally, a family determined eligible for
21 homeownership assistance by the initial PHA may purchase a unit outside of the
22 initial PHA's jurisdiction, if the receiving PHA is administering a voucher
23 homeownership program and is accepting new homeownership families. In
24 general, the portability procedures for the Housing Choice Voucher program
25 (described in §§ 982.353 and 982.355) apply to the homeownership option and
26 the administrative responsibilities of the initial and receiving PHA are not
27 altered except to the extent that an administrative function (e.g, issuance
28 of a voucher or execution of a tenancy addendum) is not applicable to the
29 homeownership option.

30 The receiving PHA may absorb the homeownership family or bill the
31 initial PHA for the homeownership housing assistance using the normal

1 portability billing process. Communications between the initial and receiving
2 PHA are necessary. As is the case for Section 8 rental portable families, all
3 of the receiving PHA's administrative policies are applicable to the
4 homeownership family. The family will be required to attend the briefing and
5 counseling sessions required by the receiving PHA. The receiving PHA, not the
6 initial PHA, will determine whether the financing for and the physical
7 condition of the unit are acceptable.

8 f. Buying another home with Section 8 assistance. A homeownership
9 family may purchase another home with Section 8 assistance provided there is
10 no mortgage loan default. The family must sell its current home in order to
11 purchase another with homeownership assistance.

12 As noted above, PHAs shall recapture a percentage of homeownership
13 assistance defined in the regulations upon the sale or refinancing of the
14 home. Proceeds invested in the purchase of another home are exempt from
15 recapture. Most of the homeownership requirements applicable to the first
16 home purchase remain applicable to a subsequent purchase. For example, the
17 family must once again meet the employment threshold. The necessity of any
18 counseling will be determined by the PHA. An independent home inspection will
19 be conducted and the PHA will determine the acceptability of the financing.
20 The maximum term of homeownership assistance applies to the cumulative time
21 the family receives homeownership assistance. The only exception to
22 eligibility requirements applicable to initial receipt of homeownership
23 assistance is that the family need not meet the first-time homebuyer
24 requirement (See § 982.637(b)).

25 g. Applicability of the Section 8 tenant-based voucher requirements to
26 the homeownership option. Section 982.641 details the portions of the voucher
27 regulations that apply to the homeownership special housing type. PHAs should
28 carefully review this section of the regulations.

29 It is noted that all civil rights laws applicable to the Section 8
30 voucher program are applicable to the homeownership program. PHAs must
31 comply with all equal opportunity and nondiscrimination requirements imposed

1 by contract or Federal law. In addition, PHAs are reminded that "finders-
2 keepers" applies to homeownership assistance; PHAs may not steer families to
3 particular units or neighborhoods. Further, as in the tenant-based rental
4 voucher program, PHAs must provide assistance to expand housing opportunities.

5 The PHA briefing for both rental and homeownership families must explain:

- 6 • Where the family may lease or purchase a unit;
- 7 • How portability works (if the family qualifies to lease or purchase a
8 unit outside the PHA jurisdiction under portability procedures); and
- 9 • The advantages of moving to an area that does not have a high
10 concentration of poor families (if the family is currently living in a high
11 poverty census tract within the jurisdiction of the PHA).

12 Further, if the family includes any person with disabilities, the PHA
13 must take appropriate steps to ensure effective communication during the
14 briefing in accordance with 24 CFR 8.6.

15 h. Link between Section 8 homeownership and the Family Self-Sufficiency
16 (FSS) Program. PHAs may wish to link Section 8 homeownership with the FSS
17 program. For example, participation in the FSS program could be a PHA
18 eligibility requirement. The PHA may also opt to incorporate the
19 homeownership goal into the family's FSS contract of participation so any FSS
20 escrow could be advanced for purchase of a home or home
21 maintenance/improvement purposes. It is noted that FSS families must meet the
22 homeownership income and employment thresholds.

23 i. PHA determination of "homeownership expense". Section 982.635(c)
24 details the expenses that the PHA will include when determining the family's
25 homeownership expenses. The principal and interest amount is the debt service
26 amount for the initial (original) mortgage debt, any mortgage insurance
27 premium, and any refinancing of such debt. The utility allowance is the same
28 utility allowance schedule as used in the rental voucher program. The PHA
29 allowance for maintenance expenses is the amount the PHA thinks is appropriate
30 for routine maintenance for a home.

31 The PHA allowance for major repairs and replacements is the amount the

PHA thinks is appropriate for a replacement "reserve" for a 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 24 CFR part 8.

These allowances for maintenance expenses and major repairs and replacements should not be based on the condition of the home, similar to how utility allowances work. It is recommended that a PHA contact counseling agencies, local realtors and relevant national organizations for advice on the appropriate level for these local allowances. (Families are not required to put the amount set aside for these two maintenance allowances in the bank or in escrow. Further, it is not expected that the monthly amounts for these allowances will cover all maintenance and capital expenditures.)

III. 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

1 "public assistance" was redundant of HUD's existing definition of "welfare
2 assistance." Further, the use of the term "welfare assistance" in this final
3 rule will help to ensure the consistent use of defined terms throughout HUD's
4 regulations.

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

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

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

16 5. Overview of special housing types (§ 982.601). This final rule
17 reorganizes and makes several clarifying changes to § 982.601, which provides
18 an overview of the special housing types. For example, the changes clarify
19 that the provisions of subpart M of 24 CFR part 982 apply solely to the
20 specific special housing type noted in the heading of each regulatory section.

21 Further, the revisions clarify that the PHA may not set aside program funds
22 or program slots for special housing types or for a specific special housing
23 type. These technical changes do not establish or modify existing program
24 requirements, but are designed solely to make § 982.601 easier to understand.

25 6. PHA capacity to operate successful Section 8 homeownership program
26 (§ 982.625(d)). This final rule adds a new § 982.625(d), which requires that
27 a PHA wishing to provide Section 8 homeownership assistance must have the
28 capacity to operate a successful homeownership program. The PHA has the
29 required capacity if it either:

- 30 • Establishes a minimum homeowner downpayment requirement of at least 3
31 percent for participation in its Section 8 homeownership program, and requires

1 that at least one percent of the minimum downpayment come from the family's
2 personal resources;

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

8 • Otherwise demonstrates in its Annual Plan that it has the capacity,
9 or will acquire the capacity, to successfully operate a Section 8
10 homeownership program. A PHA may acquire this capacity by either partnering
11 with an entity experienced in reviewing homeownership financing or by hiring
12 staff with such experience.

13 The final rule also makes a conforming change to HUD's PHA Plan
14 regulations at 24 CFR part 903. The revision is necessary so that the
15 capacity requirement can be applied fully to high-performing PHAs wishing to
16 provide Section 8 homeownership assistance. The final rule amends § 903.11
17 to provide that the information required by § 903.7(k) pertaining to
18 homeownership programs must be included in the PHA's streamlined Annual Plan
19 submission only to the extent that the PHA participates in homeownership
20 programs under section 8(y) of the 1937 Act.

21 7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and
22 982.628). For purposes of clarity, this final rule reorganizes the
23 eligibility requirements for participation in the homeownership option located
24 in §§ 982.626 and 982.627 of the proposed rule). Section 982.626 of the final
25 rule describes the initial requirements that must be satisfied before the
26 commencement of homeownership assistance. Section 982.627 of the final rule
27 sets forth the eligibility requirements (such as the minimum income and
28 employment requirements) for a families wishing to participate in the
29 homeownership option. Section 982.628 of the final rule describes the
30 eligibility requirements for homes purchased with homeownership assistance.
31 With the exception of those changes described elsewhere in this preamble, this

1 reorganization is not substantive, but is intended to clarify these regulatory
2 requirements. The substance of proposed § 982.628 and subsequent regulatory
3 sections have been redesignated to conform to the establishment of new §
4 982.628 (for example, proposed § 982.628 has become § 982.629 of this final
5 rule, proposed § 982.630 has become § 982.631, etc.).

6 8. Homeownership assistance as a reasonable accommodation
7 (§ 982.627(b)(3)). This final rule revises § 982.627 to clarify that a family
8 containing a family member with disabilities who requires homeownership
9 assistance as a reasonable accommodation is eligible for the homeownership
10 option, regardless of whether the family is a cooperative member or a first-
11 time homeowner (as those terms are defined at § 982.4).

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

18 10. Establishment of national minimum income requirement
19 (§ 982.627(c)). At the request of several public commenters, the final rule
20 establishes a national minimum income requirement that is equal to 2,000 hours
21 of yearly full-time work at the Federal minimum wage. A PHA may not establish
22 a minimum income requirement that differs from the minimum income standard
23 established by this rule.

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

30 12. Establishment of national employment requirement (§ 982.627(d)).
31 At the request of several public commenters, this final rule establishes a

1 uniform national employment requirement. For purposes of uniformity, the
2 final rule defines "full-time employment" to mean not less than an average of
3 30 hours per week. Further, the final rule adds a new § 982.627(d)(4), which
4 provides that a PHA may not establish an employment requirement that differs
5 from the employment standard established by the final rule.

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

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

16 15. Eligible homes for purchase under the homeownership option
17 (§ 982.628(a)(2)). The final rule provides that a home is eligible for
18 purchase under the homeownership option if, at the time the PHA determines
19 that the family is eligible to purchase the home with homeownership
20 assistance, the home is either under construction or already existing.

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

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

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

1 19. RESPA and predatory lending as suggested counseling topics
2 (§ 982.630(b)(9)). The final rule expands the list of suggested housing
3 counseling topics to include information about the Real Estate Settlement
4 Procedures Act (12 U.S.C.2601 et seq.) (RESPA), state and Federal truth-in-
5 lending laws, and how to identify and avoid loans with oppressive terms and
6 conditions.

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

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

17 22. Seller certification in contract of sale that the seller is not
18 debarred, suspended, or subject to a limited denial of participation
19 (§ 982.631(c)(2)(v)). In response to public comment, the final rule provides
20 that the contract of sale must contain a seller certification that the seller
21 is not debarred, suspended, or subject to a limited denial of participation
22 under 24 CFR part 24.

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

30 24. PHA approval of refinancing agreements or securing of additional
31 financing on the home (§ 982.632(c)). The final rule provides that the PHA

1 may establish requirements or other restrictions concerning refinancing of
2 debt incurred for the purchase of the home, or debt secured by the home.

3 25. PHA disapproval of lender qualifications and loan terms (§
4 982.632(d)). This final rule clarifies that the PHA may review lender
5 qualifications and the loan terms before authorizing homeownership assistance.

6 The PHA may disapprove proposed financing, refinancing or other debt if the
7 PHA determines that the debt is unaffordable, or if the PHA determines that
8 the lender or the loan terms do not meet PHA qualifications.

9 26. Prohibition on homeownership interest in second residence
10 (§ 982.633(b)(7)). This final rule clarifies that no family member may have a
11 present homeownership interest in a second residence while receiving
12 homeownership assistance.

13 27. Additional requirements for continuation of homeownership
14 assistance (§ 982.633(b)(8)). The final rule provides that the additional
15 requirements for continuation of homeownership assistance established by the
16 PHA may include a requirement for post-purchase homeownership counseling or
17 for periodic unit inspections while the family is receiving homeownership
18 assistance. With regards to post-purchase counseling, PHAs are encouraged to
19 at least provide the family written briefing materials covering the topics in
20 the PHA-required housing counseling program at the time of any refinancing of
21 the initial debt, or the financing for improvement or repair of the home.

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

28 29. Applicability of maximum term for homeownership assistance
29 (§ 982.634). The final rule clarifies that the maximum term for homeownership
30 assistance applies to any member of the household who has an ownership
31 interest in the unit during any time that homeownership payments are made, or

1 is the spouse of any member of the household who has an ownership interest in
2 the unit at the time homeownership payments are made.

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

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

16 30. Inclusion of accessibility modifications as homeownership expenses
17 (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the
18 family is a person with disabilities, eligible homeownership expenses may
19 include debt incurred to finance costs needed to make the home accessible for
20 the family member, if the PHA determines that the allowance is needed as a
21 reasonable accommodation.

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

28 32. Homeownership assistance payments to lender or family
29 (§ 982.635(d)(2)). The final rule clarifies that, if the PHA decides to make
30 the homeownership assistance payments directly to the lender, and the
31 assistance payment exceeds the amount due to the lender, the PHA must pay the

1 excess amount directly to the family.

2 33. Automatic termination of homeownership assistance (§ 982.635(e)).

3 The final rule clarifies that homeownership assistance for a family terminates
4 automatically 180 calendar days after the last housing assistance payment on
5 behalf of the family. However, a PHA has the discretion to grant relief from
6 this requirement in those cases where automatic termination would result in
7 extreme hardship for the family.

8 34. Clarification of portability procedures (§ 982.636). This final
9 rule clarifies the portability procedures for Section 8 homeownership
10 assistance. Generally, a family determined eligible for homeownership
11 assistance by the initial PHA may purchase a unit outside of the initial PHA's
12 jurisdiction, if the receiving PHA is administering a voucher homeownership
13 program and is accepting new homeownership families. In general, the
14 portability procedures for the Housing Choice Voucher program (described in
15 §§ 982.353 and 982.355) apply to the homeownership option and the
16 administrative responsibilities of the initial and receiving PHA are not
17 altered except to the extent that an administrative function (e.g, issuance
18 of a voucher or execution of a tenancy addendum) is not applicable to the
19 homeownership option.

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

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

28 37. Continued assistance after mortgage defaults (§ 982.638(d)). This
29 final rule clarifies the regulatory provisions regarding continued assistance
30 to a family that has defaulted on a mortgage obtained through the
31 homeownership option. The final rule provides that the PHA must terminate

1 voucher homeownership assistance for any member of a family that is
2 dispossessed from the home pursuant to a judgement or order of foreclosure on
3 any mortgage (whether FHA-insured or non-FHA) securing debt incurred to
4 purchase the home, or any refinancing of such debt. However, the family may
5 be eligible to receive continued voucher rental assistance. The PHA may
6 consider mitigating circumstances in determining whether to provide a family
7 with rental assistance after a mortgage default.

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

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

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

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

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

15
16 **V. Discussion of General Comments Not Regarding a Specific Regulatory Section**

17 **A. Support for Proposed Rule**

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

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

1 B. General Concerns About the Proposed Rule

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

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

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

28 Comment: The lack of uniformity in program rules for PHAs will
29 discourage lender participation and impede family choice and economic
30 mobility. Several commenters wrote that the proposed rule grants too much
31 discretion to PHAs to establish certain critical elements of the homeownership

1 program. These areas include minimum income requirements, program eligibility
2 requirements, financing requirements, and the duration of homeownership
3 assistance. The commenters wrote that, as a result of the lack of uniform
4 rules, there will be considerable disparity from one jurisdiction to another
5 unless HUD imposes uniform rules. The commenters wrote that such disparities
6 would discourage lender participation and prevent regional efforts to expand
7 homeownership opportunities. Without broad lender participation, families
8 would be deprived of the protections offered by a competitive marketplace and
9 would be vulnerable to fraudulent real estate and financing practices.

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

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

29 C. Comments Regarding Persons with Disabilities

30 Comment: Support for rule provisions regarding the elderly and persons
31 with disabilities. A number of commenters commended HUD for the sensitivity

1 shown in the proposed rule to persons with disabilities' real life situations,
2 especially in the areas of income and employment. These commenters wrote that
3 the proposed rule demonstrated that HUD is attuned to disability issues and
4 that a conscious effort was made to recognize those barriers faced in
5 accessible housing.

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

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

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

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

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

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

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

23 HUD response. The Section 8 homeownership program is a "special housing
24 type" under subpart M of the tenant-based Section 8 program regulations.
25 Except when specifically modified by subpart M, requirements in the other
26 subparts of the tenant-based regulations apply to the special housing types
27 (including the homeownership program). Accordingly, as specified in
28 § 982.301, the PHA, in briefing a family that includes any person with
29 disabilities, must take appropriate steps to ensure effective communication in
30 accordance with 24 CFR 8.6.

31 D. Comments Regarding the Role of Nonprofits

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

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

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

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

10 E. Comments Regarding Income Targeting

11 Comment: The final rule should clarify whether Section 8 homeownership
12 subsidies are subject to the same income targeting requirements as the Section
13 8 rental assistance program. A few commenters wrote that if the new income
14 targeting requirements of the Public Housing Reform Act apply, the
15 requirements will reduce the pool of families eligible for Section 8
16 homeownership assistance.

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

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

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

31 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.

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

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

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

22 H. Comments Regarding Mortgage Defaults

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

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

1 I. Other General Comments

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

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

8 One commenter wrote that the proposed regulatory text does not contain
9 comparable language. The commenter wrote that a PHA should have the
10 discretion to limit application of its Section 8 homeownership program, in
11 whole or in part, to achieve local housing goals or priorities. Accordingly,
12 the commenter suggested that the final rule contain regulatory text equivalent
13 to the quoted preamble language.
14

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

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

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

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

33 HUD response. The recommendation made by the commenters is inconsistent

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

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

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

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

17 J. General Questions About the Proposed Rule

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

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

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

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

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

1 HUD response. In response to this comment, HUD has revised the
2 definition of "net family assets" found in 24 CFR 5.603(d). The revised
3 definition excludes the value of a home currently being purchased with Section
4 8 homeownership assistance. This exclusion is limited to the first 10 years
5 after the purchase date of the home.

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

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

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

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

20

21 VI. Discussion of Comments Regarding a Specific Regulatory Section

22 For the convenience of readers, the discussion that follows is organized
23 by the regulatory section of the proposed rule it pertains to (e.g.,
24 § 982.625, § 982.633, etc.).

25 A. Definitions (§ 982.4)

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

1 insurance and permanent disability payments.

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

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

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

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

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

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

30 Comment: Applicability of homeownership requirements upon entering
31 lease-purchase agreement. Two commenters suggested that a lease-purchase

1 family should be required to comply with all homeownership requirements before
2 purchase of the home. Another commenter wrote that PHAs should be provided
3 with the option of requiring compliance with the homeownership requirements at
4 the start of the lease-purchase arrangement.

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

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

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

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

26 HUD response. HUD has not changed the requirements specified in the
27 proposed rule for lease-purchase arrangements. The final rule does not
28 require families with lease-purchase arrangements under the Section 8 tenant-
29 based rental program to comply with any of the Section 8 homeownership program
30 requirements. However, HUD believes it is in the best interest of these
31 families for the PHA to brief the family on the homeownership requirements if

1 they expect to receive Section 8 homeownership assistance to complete the
2 purchase transaction. The PHA may refer families participating in lease-
3 purchase arrangements to HUD homeownership counseling agencies. There is
4 generally little or no cost to the participant for this HUD funded counseling.

5 C. Cooperative housing (§ 982.619).

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

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

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

27 HUD response. This comment, which appears to relate only to Section 8
28 rental assistance, is outside the scope of this rulemaking, which implements
29 the "homeownership option" authorized by section 8(y) of the 1937 Act. HUD
30 notes, however, that the final rule provides that the costs of purchasing a
31 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.

HUD response. 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)).

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. 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.

1 HUD response. HUD has not adopted this suggestion. HUD notes, however,
2 that PHAs may choose to impose this condition as an additional requirement for
3 eligibility.

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

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

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

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

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

1 However, HUD has revised the definition of "first-time homeowner" at
2 § 982.4 to clarify the eligibility of single parents and displaced homemakers,
3 as those terms are defined in section 956 of the Cranston-Gonzalez National
4 Affordable Housing Act (codified at 42 U.S.C. 12713). Section 956 provides
5 that no displaced homemaker or single parent "may be denied eligibility under
6 any Federal program to assist first time homebuyers" because of previous
7 ownership of a home by or with a spouse. Accordingly, this final rule
8 provides that such individuals are "first-time homeowners" for purposes of the
9 homeownership option and are, therefore, eligible to receive Section 8
10 homeownership assistance.

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

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

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

28 Instead, if the PHA opts to offer Section 8 homeownership assistance,
29 the PHA may offer families (both current participants and applicants who have
30 been issued housing choice vouchers) that meet the initial eligibility
31 criteria (including any additional requirements established by the PHA) the

1 opportunity to use their Section 8 assistance to purchase a home. If the PHA
2 has established limits on the number of vouchers that may be used for
3 homeownership, the PHA simply suspends offering Section 8 homeownership
4 assistance at such time that the number of families receiving homeownership
5 assistance, in combination with the number currently in the pre-assistance
6 phrase of the program, reaches the PHA limit.

7 E. Initial requirements (§ 982.626)

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

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

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

26 HUD response. HUD has not adopted this suggestion. Section 8(y)
27 specifically requires homeownership eligibility criteria that are not
28 applicable to the Section 8 rental assistance program. In addition, HUD
29 believes it is appropriate for PHAs to have broad administrative authority to
30 target homeownership assistance for specific purposes. Since the PHA has the
31 option whether or not to offer Section 8 homeownership assistance, HUD

1 believes retaining PHA administrative flexibility over this area is important
2 to encourage wider implementation of the homeownership option.

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

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

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

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

27 HUD response. HUD has not revised the rule in response to this comment.
28 The relaxed eligibility requirements for elderly and disabled families are
29 used by the PHA to determine if the family is eligible for homeownership
30 assistance. The rule does not impose relaxed or exception standards for any
31 family with respect to their ability to obtain financing from a lender.

1 Lenders will determine the creditworthiness of each borrower on a case-by-case
2 basis using their own requirements and standards.

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

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

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

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

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

24 HUD response. HUD agrees that the regulation should establish a
25 national standard for the minimum income requirements. As suggested by
26 several of the commenters, HUD has decided to establish a national minimum
27 income requirement that is equal to 2,000 hours of yearly full-time work under
28 the Federal minimum wage. A PHA may not establish a minimum income
29 requirement that differs from the minimum income standard established by this
30 final rule. HUD believes that this standard is administratively straight-
31 forward, and addresses the statutory income requirement without arbitrarily

1 eliminating working families that are making no more than the minimum wage.

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

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

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

27 HUD Response. The purpose of the minimum income requirement is to
28 ensure that the family has adequate resources to meet the additional costs
29 associated with homeownership. The proposed rule tied the minimum income to
30 the head of household and spouse in order to ensure that those family members
31 who actually owned the home met the income requirement, as opposed to other

1 family members that might shortly leave the household following the purchase
2 (thereby increasing the risk of defaults). However, HUD agrees that this type
3 of restriction does not sufficiently take the variety of family structures
4 into account. Therefore, the final rule provides that the adult family
5 members who will own the home at commencement of homeownership assistance must
6 have qualified monthly income (gross income) that is not less than the minimum
7 income requirement, as opposed to only the head and spouse.

8 Comment: Disabled and elderly families should be exempt from minimum
9 income requirements. One commenter wrote that although the rule permits
10 public assistance payments to be considered in determining whether an elderly
11 or disabled family meets the minimum income requirements, disabled or elderly
12 families would still have difficulty in meeting the minimum income threshold.

13 The commenter suggested that elderly and disabled families should be exempt
14 from the minimum income requirements, because the goal of rewarding work does
15 not apply to these households.

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

22 H. Family Employment (§ 982.627(c))

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

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

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

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

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

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

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

16 HUD response. The final rule does not extend the minimum employment
17 term. HUD believes one year of substantially continuous employment is an
18 acceptable minimum threshold and a realistic gauge of the likelihood of
19 continued employment in the future. At the request of several public
20 commenters, this final rule establishes a uniform national employment
21 requirement. For purposes of uniformity, the final rule defines "full-time
22 employment" to mean not less than an average of 30 hours per week. Further,
23 the final rule adds a new § 982.627(d)(4), which provides that a PHA may not
24 establish an employment requirement that differs from the employment standard
25 established by the final rule. However, the lender will apply its own
26 underwriting criteria, which may include an employment requirement that is
27 more stringent than the standard adopted by the final rule.

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

30 Comment: Prohibition against mortgage defaults is unnecessarily
31 restrictive. Several commenters wrote that the requirement is unnecessarily

1 restrictive. These commenters wrote that this is a matter best left to the
2 discretion of the loan underwriter, who will consider the default in
3 determining whether to approve the mortgage.

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

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

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

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

22 HUD response. HUD agrees with the comment that permitting applicants to
23 participate in the homeownership option will present PHAs with several
24 significant challenges (such as defining a realistic search term for a first-
25 time homebuyer without creating adverse impact on utilization rates and
26 administrative fees) that do not surface if the PHA limits the option to
27 current rental participants. For this reason, HUD anticipates that most
28 participants in the Section 8 homeownership program will be families currently
29 participating in the tenant-based rental program. The time required for a
30 current participant to locate and purchase a home will have a minimal impact
31 on the PHA's lease-up rate or financial management activities since the family

1 may continue to receive rental assistance in their rental unit during the
2 search and settlement process. The decision to extend the homeownership
3 option to applicants, participants, or both applicants and participants rests
4 with the PHA.

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

15 HUD response. Neither the April 30, 1999 proposed nor this final rule
16 place a two month limitation on the family's search for a home. Section
17 982.303 (term of voucher) is not applicable to the homeownership option (see §
18 982.641(b)). HUD has not adopted the suggestions to establish a minimum term
19 for family search and purchase. HUD believes this decision is properly left
20 to the administrative discretion of the PHA, as the housing market will vary
21 from community to community. However, in establishing such time limits, the
22 PHA should ensure that a family who has executed a sales contract is provided
23 reasonable time to close on the purchase of the home.

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

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

30 Comment: The PHA should provide a letter to the lender verifying the
31 applicant's family income, payment standard assistance, and any other

1 financial help that would be offered to the family. Two commenters wrote that
2 this type of documentation would enable the family to show prospective
3 sellers, realtors, etc. that the family is in fact empowered to make the
4 acquisition of a home. The commenters also wrote that this would assist the
5 lender to pre-qualify the family accurately.

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

16 K. Homeownership counseling (§ 982.629)

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

25 HUD Response. HUD has not adopted these recommendations. There are no
26 additional appropriations made available for this purpose. Furthermore, PHAs
27 can partner with HUD-funded homeownership counseling agencies to provide the
28 necessary counseling. Since these agencies provide homeownership counseling
29 services at little or no charge, the cost incurred by the PHA would be
30 nominal. A list of the HUD-approved homeownership counseling agencies is
31 available from the HUD Housing Counseling Clearinghouse website

1 (<http://www.hudhcc.org/agencies/agencies.html>).

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

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

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

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

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

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

30 Comment: Counseling programs should include information on fair housing
31 and fair housing lending practices, as well as referrals to local fair housing

1 enforcement agencies. One commenter made this suggestion.

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

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

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

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

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

1 distinct from the statutory HQS inspection.

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

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

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

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

30 HUD response. HUD has not provided PHAs with the discretion to relax or
31 modify the inspection requirements for newly constructed homes. HUD does not

1 believe that the inspection requirement will prove problematic for new homes.

2 The unit must initially meet the HQS and there is no automatic guarantee
3 against poor construction or other types of problems, regardless of the date
4 of completion of a particular unit.

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

12 HUD response. The statute explicitly provides that the annual HQS
13 inspection is not required for section 8(y) units. While the final rule does
14 not require the PHA to conduct subsequent inspections of the unit, the final
15 rule clarifies that the additional requirements for continuation of
16 homeownership assistance established by the PHA may include additional unit
17 inspections while the family is receiving homeownership assistance (see
18 § 982.633(b)(7)).

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

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

29 Comment: The independent inspector should be allowed to be an employee
30 or contractor of the PHA. One commenter wrote that some PHAs contract with
31 private nonprofit agencies that provide a variety of housing related services.

1 According to the commenter, these agencies have rehabilitation programs and
2 inspectors that are completely separate from the Section 8 program. The
3 commenter wrote that PHAs should not lose these agencies as a resource for
4 independent inspections.

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

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

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

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

26 HUD response. After carefully considering the comments submitted on
27 this issue, HUD has decided that it is appropriate to retain PHA
28 administrative discretion to establish requirements regarding the terms of the
29 financing. The PHA is in the best position to determine what is workable in
30 its local community, and what level of risk related to variable interest rate
31 mortgages and balloon payments is acceptable for the PHA's homeownership

1 program. HUD believes that the flexibility granted to PHAs by the final rule
2 will help to ensure responsible financial oversight of the homeownership
3 program and that homeowners are provided with necessary protections. In
4 addition, HUD believes that allowing the PHA to prohibit questionable types of
5 financing will increase the number of PHAs willing to offer the homeownership
6 option.

7 While HUD believes that PHAs should have the discretion to determine
8 what financing requirements are appropriate for their localities, HUD also
9 wishes to protect families participating in the Section 8 homeownership option
10 from abusive lending practices. This final rule makes several changes that
11 are designed to ensure that families are protected from abusive lending
12 practices. For example, § 982.632 of this final rule clarifies that a PHA may
13 review lender qualifications and the loan terms before authorizing
14 homeownership assistance. The PHA may disapprove proposed financing,
15 refinancing or other debt if the PHA determines that the debt is unaffordable
16 or the lender or the loan terms do not meet PHA qualifications. HUD also
17 encourages PHAs to analyze each loan (including refinancing or financing for
18 improvements or repairs) to identify and eliminate abusive lending practices.

19 (See Section VII. of this preamble for additional information regarding the
20 prevention of predatory lending practices in the Section 8 homeownership
21 option.)

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

30 HUD response. HUD believes such a requirement is too restrictive and
31 could inappropriately limit available financing in some markets. The final

1 rule continues to allow the PHA to establish requirements concerning the
2 qualification of lenders but does not impose any for the program as a whole.

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

11 HUD response. The proposed rule did not propose to establish a minimum
12 downpayment requirement, but proposed to grant the PHA flexibility to
13 establish a requirement for a minimum homeowner equity payment from the
14 family's personal resources. The final rule continues to provide this
15 flexibility to the PHA. A PHA may determine that a minimum contribution by
16 the family for the downpayment is appropriate to demonstrate the family's
17 commitment and readiness for the responsibilities of homeownership. HUD notes
18 that an Individual Development Account (IDA) is considered to be a family
19 asset under HUD's annual income regulations at § 5.609 and would, therefore,
20 be considered a personal family resource for purposes of meeting such a PHA
21 downpayment requirement.

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

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

1 contributions to the downpayment or closing costs, which would be applicable
2 regardless of the PHA policy regarding seller contributions.

3 Comment: Use of FHA underwriting standards for non-FHA insured loans.

4 Several commenters supported the requirement that all loans under the Section
5 8 homeownership program meet FHA underwriting criteria. On the other hand,
6 other commenters wrote that the use of FHA underwriting standards would unduly
7 restrict the availability of properties available for purchase. These
8 commenters wrote that the use of FHA criteria would prevent families from
9 using other types of flexible mortgage financing designed to assist low-income
10 homebuyers. Some commenters also wrote that the added burden and restrictions
11 of complying with FHA requirements would deter lenders from participating in
12 the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 O. Maximum term of homeownership assistance (§ 982.633)

24 Comment: What is the appropriate length of time to provide
25 homeownership assistance to the family? Several commenters wrote in support
26 of the ten year limit. Other commenters urged HUD to extend the 10 year
27 limit. Many of these commenters suggested that the maximum term be extended
28 to fifteen, twenty, or thirty years, to better reflect usual mortgage terms.
29 The commenters urging an extension of the maximum 10 year period stated that
30 the shorter term would discourage lenders and the secondary mortgage market
31 from participating in the program. Several of these commenters wrote that in

1 ten years it is unlikely that the unamortized balance of a mortgage could be
2 refinanced at a monthly payment affordable to an unassisted homeowner,
3 therefore resulting in a large number of mortgage defaults. Accordingly, the
4 commenters stated that the maximum term might limit homeownership assistance
5 to higher income families able to afford the increased mortgage payments
6 following the termination of assistance. Further, low income families
7 concerned about defaulting at the end of the maximum term would be forced to
8 purchase in depressed real estate markets, such as minority and/or poverty
9 concentrated areas.

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

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

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

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

1 minimum term than the Federal standard.

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

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

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

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

1 under the homeownership option).

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

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

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

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

30 P. Amount and distribution of monthly homeownership assistance payment
31 (§ 982.634)

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

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

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

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

1 or changes in family composition.

2 Comment: Should the family or the lender receive the HAP payments?

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

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

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

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

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

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

4 Comment: PHAs should be permitted to set a separate payment standard
5 for the homeownership program. Several commenters wrote that PHAs should have
6 the latitude to set a separate payment standard for the homeownership option.

7 For example, a payment standard of 95% of the Fair Market Rent (FMR) might
8 work for the rental market, but for the for-sale market a payment standard of
9 105% might be more appropriate. Another commenter wrote that, if the unit
10 selected by the participating family is new, the PHA should have the latitude
11 to adjust the payment standard to account for the superiority of the housing
12 unit.

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

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

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

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

29 HUD response. HUD has not adopted this comment. The costs of
30 maintaining and repairing a home are significant expenses associated with
31 homeownership. HUD does not believe it is inappropriate to consider these

1 costs in determining the monthly homeownership expense for a family.
2 Furthermore, in any case where the family's monthly homeownership expenses
3 exceed the applicable payment standard, the maximum subsidy that may be paid
4 on behalf of a family is capped by the applicable payment standard.
5 Reimbursement for such expenses is therefore limited by the voucher subsidy
6 formula.

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

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

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

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

27 Comment: HUD should develop a uniform rule for allowances of
28 homeownership expenses. The proposed rule would allow PHAs to adopt policies
29 for determining the amount of homeownership expenses in determining the
30 family's Section 8 subsidy amount. Several commenters stated that giving
31 discretion to PHAs to exclude any of these amounts as expenses would create

1 great inequities across jurisdiction lines. The commenters suggested that HUD
2 adopt a uniform rule regarding homeownership expenses. One of the commenters
3 recommended that all of the listed items be considered homeownership expenses.

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

13 Q. Portability (§ 982.635)

14 Comment: Applicability of portability to the homeownership program.

15 Several commenters suggested that homeownership assistance should be freely
16 portable. The commenters wrote that restricting portability would prohibit a
17 family living in a center city from pursuing job opportunities in suburban
18 areas where the homeownership option is not provided.

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

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

30 HUD response. As noted above, HUD has clarified the portability
31 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

1 this final rule). HUD believes it is appropriate to permit family mobility in
2 the homeownership program. Families may need to move for a number of
3 compelling reasons such as safer neighborhoods, better schools, because more
4 or less space is needed, or to be closer to a job.

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

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

25 HUD response. HUD agrees with the commenters that it is appropriate for
26 HUD to recapture homeownership assistance upon the sale or refinancing of the
27 home. Further, HUD agrees with the commenters that the recaptured assistance
28 should be used to assist additional housing choice voucher assistance
29 families. HUD recognizes that the possibility of accumulating equity in the
30 property and the realization of profit upon sale is an important facet of
31 homeownership. However, HUD believes these benefits can be realized even if a

1 portion of the assistance payments made on behalf of the family are retained
2 by the PHA out of the net sales proceeds of the property in order to further
3 assist other needy families.

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

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

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

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

31 HUD response. In calculating the family income, the treatment of income

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

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

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

15 Comment: What ramifications should a family default have on continued
16 participation in the rental program? Several commenters suggested that a
17 family that defaults on its mortgage should not be allowed to receive Section
18 8 rental assistance. The commenters recommended that the family should be
19 placed on the waiting list. However, there was no consensus among these
20 commenters regarding where on the waiting list the family should be placed.
21 For example, one commenter wrote that the family should not be penalized
22 through placement at the end of the waiting list. Another commenter, however,
23 recommended that a defaulting family should be placed at the bottom of the
24 Section 8 waiting list.

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

31 Several commenters recommended that the PHA should have the flexibility

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

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

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

23 The final rule continues to leave the decision on the ramifications of
24 the termination of homeownership assistance because of a default with the PHA.

25 The PHA may allow the family to move and receive rental assistance (except in
26 cases where the family defaulted on an FHA-insured mortgage and has not
27 complied with HUD requirements for conveyance and possession of the property).
28 The PHA may also choose, consistent with the PHA policy in the PHA
29 administrative plan, to require the family to reapply for rental assistance.
30 The PHA may place the family at the bottom of the list, at the top of the
31 list, or wherever the family would normally fall based on PHA preferences.

1 The PHA may also prohibit the family from re-applying for assistance for a
2 certain period of time. HUD notes that the family may request an informal
3 hearing if a current participant that has defaulted on a mortgage for a
4 Section 8 homeownership unit is denied a rental voucher.

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

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

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

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

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

30 S. Administrative fees (\$ 982.637)

31 Comment: Additional HUD funding is needed for implementation of new

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

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

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

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

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

VII. Prevention of Predatory Lending Practices

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.

As noted above, 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 a PHA may review lender qualifications and the loan terms before authorizing homeownership assistance.

The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications.

PHAs are also 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

1 family debt to income; loans based on unverified sources of income or without
2 regard to the borrower's ability to repay; excessive fees or fees "packed"
3 into the loan amount without the borrower's understanding; and "loan flipping"
4 accompanied by high fees (including prepayment penalties that strip the
5 borrower's equity with each successive refinancing).

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

11 **VIII. Performance-Based Standards for the Section 8 Homeownership Option**

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

18 **IX. Findings and Certifications**

19 Paperwork Reduction Act

20 The homeownership option is a special housing type under 24 CFR part
21 982, subpart M, of the unified rule for the Section 8 tenant-based voucher
22 program. The information collection requirements of the Section 8 rental
23 voucher program approved by the Office of Management and Budget (OMB) under
24 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) are not increased by
25 the implementation of this new special housing type. While the rule
26 substitutes several variations to existing requirements under the normal
27 Section 8 tenant-based program, the homeownership option does not increase the
28 total reporting and recordkeeping burden resulting from the collection of
29 information for the Section 8 voucher program. The following provisions of
30 this final rule contain information collections: §§ 982.305, 982.629, 982.631,
31 982.633, and 982.638.

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

5 Environmental Impact

6 A Finding of No Significant Impact (FONSI) with respect to the
7 environment was made in accordance with HUD regulations in 24 CFR part 50 that
8 implement section 102(2)(C) of the National Environmental Policy Act of 1969
9 (42 U.S.C. 4223) at the proposed rule stage. That FONSI remains applicable to
10 this final rule and is available for public inspection between 7:30 a.m. and
11 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General
12 Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh
13 Street, SW, Washington, DC.

14 Unfunded Mandates Reform Act

15 Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-
16 1538) establishes requirements for Federal agencies to assess the effects of
17 their regulatory actions on State, local, and tribal governments and the
18 private sector. This final rule does not impose any Federal mandates on any
19 State, local, or tribal governments or the private sector within the meaning
20 of Unfunded Mandates Reform Act of 1995.

21 Executive Order 12866

22 The Office of Management and Budget (OMB) reviewed this final rule under
23 executive Order 12866, Regulatory Planning and Review. OMB determined that
24 this final rule is a "significant regulatory action," as defined in section
25 3(f) of the Order (although not economically significant, as provided in
26 section 3(f)(1) of the Order). Any changes made to the final rule subsequent
27 to its submission to OMB are identified in the docket file, which is available
28 for public inspection in the office of the Department's Rules Docket Clerk,
29 Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

30 Impact on Small Entities

31 The Secretary, in accordance with the Regulatory Flexibility Act (5

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

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

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

19 Executive Order 13132, Federalism

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

1 Catalog of Domestic Assistance Number

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

4
5 **List of Subjects**

6 24 CFR Part 5

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

13 24 CFR Part 903

14 Administrative practice and procedure, Public housing, Reporting and
15 recordkeeping requirements.

16 24 CFR Part 982

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

19
20 For the reasons described in the preamble, HUD amends 24 CFR parts 5,
21 903 and 982 as follows:

22
23 **PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

24
25 1. The authority citation for part 5 continues to read as follows:

26
27 **AUTHORITY:** 42 U.S.C. 3535(d), unless otherwise noted.

28
29 2. In § 5.603(d), revise the definition of "net family assets" by
30 adding new paragraph (4) to read as follows:

1 **§ 5.603 Definitions.**

2 * * * *

3 (d) * *

4 Net family assets. * *

5 (4) For purposes of determining annual income under § 5.609, the term
6 "net family assets" does not include the value of a home currently being
7 purchased with assistance under part 952, subpart M of this title. This
8 exclusion is limited to the first 10 years after the purchase date of the
9 home.

10 * * * *

11
12 **PART 903 -- PUBLIC HOUSING AGENCY PLANS**

13
14 3. The authority citation for 24 CFR part 903 continues to read as
15 follows:

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

17
18 4. Revise § 903.11(b)(1) to read as follows:

19
20 **§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?**

21 * * * *

22 (b) * *

23 (1) For high performing PHAs, the streamlined Annual Plan must include
24 the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m),
25 (n), (o), (p) and (r). The information required by § 903.7(m) must be
26 included only to the extent this information is required for the PHA's
27 participation in the public housing drug elimination program and the PHA
28 anticipates participating in this program in the upcoming year. The
29 information required by § 903.7(k) must be included only to the extent that
30 the PHA participates in homeownership programs under section 8(y).

31 * * * *

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

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

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

6. 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).

1 * * * * *

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

13 * * * * *

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

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

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

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

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

27 * * * * *

28 Interest in the home. In the homeownership option:

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

* * * * *

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

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(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)).

* * * * *

8. 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., increments 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.

9. 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

10. 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.

* * * * *

11. 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 § 982.638; 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

1 in accordance with the HQS, the PHA may exercise all available remedies,
2 regardless of whether the family or the cooperative is responsible for such
3 breach of the HQS. PHA remedies for breach of the HQS include recovery of
4 overpayments, abatement or other reduction of housing assistance payments,
5 termination of housing assistance payments and termination of the HAP
6 contract.

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

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

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

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

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

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

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

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

31 * * * * *

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

Homeownership Option

982.625 Homeownership option: General.
 982.626 Homeownership option: Initial requirements.
 982.627 Homeownership option: Eligibility requirements for families.
 982.628 Homeownership option: Eligible units.
 982.629 Homeownership option: Additional PHA requirements for family search and purchase.
 982.630 Homeownership option: Homeownership counseling.
 982.631 Homeownership option: Home inspections and contract of sale.
 982.632 Homeownership option: Financing purchase of home; affordability of purchase.
 982.633 Homeownership option: Continued assistance requirements; Family obligations.
 982.634 Homeownership option: Maximum term of homeownership assistance.
 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.
 982.636 Homeownership option: Portability.
 982.637 Homeownership option: Move with continued tenant-based assistance.
 982.638 Homeownership option: Denial or termination of assistance for family.
 982.639 Homeownership option: Administrative fees.
 982.640 Homeownership option: Recapture of homeownership assistance.
 982.641 Homeownership option: Applicability of other requirements.

§ 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,

1 and requires that at least one percent of the minimum downpayment come from
2 the family's personal resources;

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

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

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

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

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

14
15 **§ 982.626 Homeownership option: Initial requirements.**

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

19 (1) The family is qualified to receive homeownership assistance (see
20 § 982.627);

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

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

24 (b) Additional PHA requirements. Unless otherwise provided in this
25 part, the PHA may limit homeownership assistance to families or purposes
26 defined by the PHA, and may prescribe additional requirements for commencement
27 of homeownership assistance for a family. Any such limits or additional
28 requirements must be described in the PHA administrative plan.

29 (c) Environmental requirements. The PHA is responsible for complying
30 with the authorities listed in § 58.6 of this chapter requiring the purchaser
31 to obtain and maintain flood insurance for units in special flood hazard

1 areas, prohibiting assistance for acquiring units in the coastal barriers
2 resource system, and requiring notification to the purchaser of units in
3 airport runway clear zones and airfield clear zones.

4
5 **§ 982.627 Homeownership option: Eligibility requirements for families.**

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

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

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

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

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

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

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

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

28 (8) The family also satisfies any other initial requirements
29 established by the PHA (see § 982.626(b)). Any such additional requirements
30 must be described in the PHA administrative plan.

31 (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 (defined at § 982.4);

(2) A cooperative member (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 yearly 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 (c)(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.

(3) A PHA may not establish a minimum income requirement that differs

1 from the minimum income standard established by this paragraph.

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

6 (i) Is currently employed on a full-time basis (the term "full-time
7 employment" means not less than an average of 30 hours per week); and

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

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

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

22 (4) A PHA may not establish an employment requirement that differs from
23 the employment standard established by this paragraph.

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

28
29 **§ 982.628 Homeownership option: Eligible units.**

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

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

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

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

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

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

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

15
16 **§ 982.629 Homeownership option: Additional PHA requirements for family**
17 **search and purchase.**

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

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

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

25
26 **§ 982.630 Homeownership option: Homeownership counseling.**

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

31 (b) Suggested topics for the PHA-required pre-assistance counseling

1 program include:

- 2 (1) Home maintenance (including care of the grounds);
- 3 (2) Budgeting and money management;
- 4 (3) Credit counseling;
- 5 (4) How to negotiate the purchase price of a home;
- 6 (5) How to obtain homeownership financing and loan preapprovals,
- 7 including a description of types of financing that may be available, and the
- 8 pros and cons of different types of financing;
- 9 (6) How to find a home, including information about homeownership
- 10 opportunities, schools, and transportation in the PHA jurisdiction;
- 11 (7) Advantages of purchasing a home in an area that does not have a
- 12 high concentration of low-income families and how to locate homes in such
- 13 areas;
- 14 (8) Information on fair housing, including fair housing lending and
- 15 local fair housing enforcement agencies; and
- 16 (9) Information about the Real Estate Settlement Procedures Act (12
- 17 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how
- 18 to identify and avoid loans with oppressive terms and conditions.
- 19 (c) The PHA may adapt subjects covered in pre-assistance counseling (as
- 20 listed in paragraph (b) of this section to local circumstances and the needs
- 21 of individual families.
- 22 (d) The PHA may also offer additional counseling after commencement of
- 23 homeownership assistance (ongoing counseling). If the PHA offers a program of
- 24 ongoing counseling for participants in the homeownership option, the PHA shall
- 25 have discretion to determine whether the family is required to participate in
- 26 the ongoing counseling.
- 27 (e) If the PHA is not using a HUD-approved housing counseling agency to
- 28 provide the counseling for families participating in the homeownership option,
- 29 the PHA should ensure that its counseling program is consistent with the
- 30 homeownership counseling provided under HUD's Housing Counseling program.

31

1 **§ 982.631 Homeownership option: Home inspections and contract of sale.**

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

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

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

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

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

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

29 (2) The contract of sale must:

30 (i) Specify the price and other terms of sale by the seller to the
31 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 debt secured by 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 other debt 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

1 the PHA.

2 (e) All PHA financing or affordability requirements must be described
3 in the PHA administrative plan.
4

5 **§ 982.633 Homeownership option: Continued assistance requirements; Family**
6 **obligations.**

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

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

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

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

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

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

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

31 (4) Supplying required information. (i) The family must supply

1 required information to the PHA in accordance with § 982.551(b).

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

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

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

9 (C) The family's homeownership expenses.

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

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

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

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

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

27 (c) Statement of homeowner obligations. Before commencement of
28 homeownership assistance, the family must execute a statement of family
29 obligations in the form prescribed by HUD. In the statement, the family
30 agrees to comply with all family obligations under the homeownership option.
31

1 § 982.634 Homeownership option: Maximum term of homeownership assistance.

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

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

8 (2) Ten years, in all other cases.

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

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

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

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

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

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

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

1 this section.

2
3 § 982.635 Homeownership option: Amount and distribution of monthly
4 homeownership assistance payment.

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

- 8 (1) The payment standard minus the total tenant payment; or
9 (2) The family's monthly homeownership expenses minus the total tenant
10 payment.

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

- 13 (i) The payment standard for the family unit size; or
14 (ii) The payment standard for the size of the home.
15 (2) If the home is located in an exception rent area, the PHA must use
16 the appropriate payment standard for the exception rent area.

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

- 18 (i) The payment standard (as determined in accordance with paragraphs
19 (b)(1) and (b)(2) of this section) at the commencement of homeownership
20 assistance for occupancy of the home; or
21 (ii) The payment standard (as determined in accordance with paragraphs
22 (b)(1) and (b)(2) of this section) at the most recent regular reexamination of
23 family income and composition since the commencement of homeownership
24 assistance for occupancy of the home.

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

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

- 31 (2) Homeownership expenses for a homeowner may only include amounts

1 allowed by the PHA to cover:

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

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

6 (iii) Home insurance;

7 (iv) The PHA allowance for maintenance expenses;

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

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

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

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

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

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

25 (iii) Home insurance;

26 (iv) The PHA allowance for maintenance expenses;

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

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

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

31 (4) If the home is a cooperative or condominium unit, homeownership

1 expenses may also include cooperative or condominium operating charges or
2 maintenance fees assessed by the condominium or cooperative homeowner
3 association.

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

6 (1) Directly to the family or;

7 (2) At the discretion of the PHA, to a lender on behalf of the family.

8 If the assistance payment exceeds the amount due to the lender, the PHA must
9 pay the excess directly to the family.

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

15
16 **§ 982.636 Homeownership option: Portability.**

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

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

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

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

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

10
11 **§ 982.637 Homeownership option: Move with continued tenant-based assistance.**

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

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

21 (3) The PHA may establish policies that prohibit more than one move by
22 the family during any one year period.

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

28 (1) The requirement for pre-assistance counseling (§ 982.630) is not
29 applicable. However, the PHA may require that the family complete additional
30 counseling (before or after moving to a new unit with continued assistance
31 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

1 rental assistance. However, the PHA must deny such permission, if:

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

3 (2) The family fails to demonstrate that:

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

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

8
9 **§ 982.639 Homeownership option: Administrative fees.**

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

13
14 **§ 982.640 Homeownership option: Recapture of homeownership assistance.**

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

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

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

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

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

30 (i) The costs of any capital expenditures;

31 (ii) The costs incurred by the family in the sale of the home (such as

1 sales commission and closing costs);

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

5 (iv) Any amounts that have been previously recaptured, in accordance
6 with this section.

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

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

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

13 (i) The costs of any capital expenditures;

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

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

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

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

28
29 **§ 982.641 Homeownership option: Applicability of other requirements.**

30 (a) General. The following types of provisions (located in other
31 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 of the assisted tenancy;

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

(5) Any provisions concerning the issuance or term of 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 tenancy);

(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).

(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;

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

- 3 (1) Section 982.403 (Terminating HAP contract when unit is too small);
4 (2) Section 982.404 (Maintenance: Owner and family responsibility; PHA
5 remedies); and
6 (3) Section 982.405 (PHA initial and periodic unit inspection).

7 (e) Subpart J requirements. The requirements of this part 982, subpart
8 J (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451-
9 456) do not apply to assistance under the homeownership option.

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

- 14 (1) Section 982.504 (Voucher tenancy: Payment standard amount and
15 schedule);
16 (2) Section 982.516 (Family income and composition: Regular and interim
17 reexaminations); and
18 (3) Section 982.517 (Utility allowance schedule).

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

- 21 (1) Section 982.551(c) (HQS breach caused by family);
22 (2) Section 982.551(d) (Allowing HQS inspection);
23 (3) Section 982.551(e) (Violation of lease);
24 (4) Section 982.551(g) (Owner eviction notice); and
25 (5) Section 982.551(j) (Interest in unit).

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

3 (1) Sections 982.602-982.619; and

4 (2) Sections 982.622-982.624.

5
6
7 Dated: _____

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9
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11 _____
12 Harold Lucas, Assistant Secretary for
13 Public and Indian Housing
14
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17 [FR-4427-F-02]
18

RENT GUARANTEE PROGRAM FOR HOMELESS FAMILIES

Purpose/Program Description

Assist homeless families in obtaining permanent housing by providing incentives to prospective landlords in the form of guaranteed rent for a maximum of the equivalent of 3 months rent that will only be paid if tenant defaults on rent or causes damage to the apartment.

Who's Eligible?

- A family with one or more minor children (including a pregnant woman or couple where the woman is pregnant and
- Have a total household income of up to 200% of the federal poverty guidelines (\$2,240/month for a family of 3).
- Have no permanent address and be temporarily without any place to live, residing in a shelter for the homeless, a hotel or motel, or in the home of another household designed for occupancy by only one household.

Who will Administer the Program?

The program will be administered in the field by the same people who now operate the Housing Security Guarantee Program, i.e., the CAP agencies in all counties but Hillsboro, which utilizes The Way Home in Manchester for Northern Hillsborough County and the Nashua Pastoral Care Center in Southern Hillsborough County.

How much will the Program Cost DHHS?

Given that this is a rental guarantee program, costs will be dependent on the need to use the guarantee. The pilot will be used to determine usage and costs.

Background Info for Speech

Event: Path breaking meeting on research and policy for inclusive and progressive asset building, such as Individual Development Accounts (IDAs and Retirement Savings Accounts (RSAs). The symposium will bring together existing knowledge, and set the stage for future policy.

Importance: Asset building is a centerpiece Clinton idea. He proposed IDAs in his 1992 presidential campaign. Success with IDAs led to President Clinton's State of the Union proposals for USAs in 1999 and RSAs in 2000. Vice President Gore has carried forward these ideas in his Retirement Savings Plus (RSP) proposal. President Clinton's enormous contribution is to say clearly and boldly, with substantial policy initiatives, that asset building should include all Americans.

State and federal politics: Asset building is a winning idea. At federal and state levels, legislation for IDAs has strong bipartisan support (in many states, IDA bills pass with only one or two dissenting votes). Vice President Gore's RSP proposal is a progressive alternative to Governor Bush's call for individual accounts in Social Security, and Gore's proposal has greater public support.

Missouri politics: Democratic Governor Mel Carnahan, candidate for Senate, created Family Development Accounts in 1999. Democrat Bob Holden, State Treasurer and candidate for Governor is a big supporter of IDAs and asset building.

Products: The meeting will result in press coverage, a report widely distributed in hard copy and on the web, and a published book. Each will contain President Clinton's remarks.