

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Margy Waller

Subseries:

OA/ID Number: 21587

FolderID:

Folder Title:

Section 8 Homeownership [binder] [2]

Stack:

S

Row:

98

Section:

6

Shelf:

3

Position:

2

1 established by this rule. A PHA, however, shall approve a family for
 2 participation that cannot otherwise demonstrate compliance with this standard,
 3 if the PHA determines that the family's circumstances indicate reasonable
 4 prospects to participate successfully in the homeownership option.

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

11 12. Establishment of national employment requirement (§ 982.627(d)).
 12 At the request of several public commenters, this final rule establishes a
 13 uniform national employment requirement. For purposes of uniformity, the
 14 final rule defines "full-time employment" to mean not less than an average of
 15 30 hours per week. Further, the final rule adds a new § 982.627(d)(4), which
 16 provides that a PHA may not establish an employment requirement that differs
 17 from the employment standard established by the final rule.

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

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

28 15. Eligible homes for purchase under the homeownership option
 29 (§ 982.628(a)(2)). The final rule provides that a home is eligible for
 30 purchase under the homeownership option if, at the time the PHA determines
 31 that the family is eligible to purchase the home with homeownership

1 but there may an adult child who is employed and providing the income upon
2 which the family could qualify for financing. One commenter suggested that
3 the final rule should simply require that an adult member of the household be
4 gainfully employed.

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

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

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

1 the secondary market or that participate in governmental lending or mortgage
2 insurance programs; State Housing Finance Agency programs; subsidy programs
3 administered by states, counties, cities, or subdivisions; and nonprofit
4 organizations.

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

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

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

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

31 HUD response. This final rule does not prohibit seller contributions to

1 membership shares prior to the commencement of homeownership assistance, the
2 family has entered a contract of sale in accordance with § 982.630(c).

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

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

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

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

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

15 (c) Minimum income requirements. (1) At commencement of homeownership
16 assistance for the family, the family must demonstrate that the qualified
17 ~~monthly~~ yearly income (gross income), as determined by the PHA in accordance
18 with § 5.609 of this chapter, of the adult family members who will own the
19 home at commencement of homeownership assistance is not less than the Federal
20 minimum hourly wage multiplied by 2,000 hours. ~~A PHA, however, shall approve~~
21 ~~a family for participation that cannot otherwise demonstrate compliance with~~
22 ~~this paragraph, if the PHA determines that the family's circumstances indicate~~
23 ~~reasonable prospects to participate successfully in the homeownership option.~~

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

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

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

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

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

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

9 (3) A PHA may not establish a minimum income requirement that differs
10 from the minimum income standard established by this paragraph.

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

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

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

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

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

31 (4) A PHA may not establish an employment requirement that differs from

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 903 and 982

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

RIN: 2577-AB90

Section 8 Homeownership Program

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

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 30, 1999 (64 FR 23488), HUD published a proposed rule for

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

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

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

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

participant family, regardless of whether the voucher is used for rental or homeownership assistance. A PHA may not reduce a family's choice by limiting the use of homeownership assistance to particular units, neighborhoods, developers, or lenders. For example, while HUD encourages PHAs to develop partnerships with lenders in order to assist the family in obtaining financing, the PHA may not require the family to use a certain lender or financing approach.

II. 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

1 Federal government, comply with secondary mortgage market underwriting
2 requirements, or comply with generally accepted private sector underwriting
3 standards; or

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

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

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

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

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

31 A home may be purchased under the homeownership option if, at the time

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

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

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

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

1 contract, request for lease approval and lease addendum are not applicable to
2 the Section 8 homeownership program.

3 The homeownership housing assistance payment will equal the lower of (1)
4 the payment standard minus the total tenant payment or (2) the monthly
5 homeownership expenses minus the total tenant payment. The family is
6 responsible for the monthly homeownership expenses not reimbursed by the
7 housing assistance payment. (Total tenant payment is higher of the minimum
8 rent, 10 percent of monthly income, 20 percent of monthly adjusted income, or
9 the welfare rent.) The PHA must use the utility allowance schedule and
10 payment standard schedules applicable to the Section 8 voucher rental program.

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

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

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

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

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

14 A PHA opting to administer the Section 8 homeownership program must
15 establish local homeownership policies. The following policies must be
16 described in the PHA administrative plan: any additional PHA requirements for
17 participation in its Section 8 homeownership program (§ 982.626(b)); PHA
18 maximum times to locate and purchase a home (§ 982.629(a)); PHA policy about
19 issuing the family a rental voucher if the family does not find a suitable
20 house to buy (§§ 982.629(c)); any minimum cash downpayment or equity
21 requirements (§ 982.632); any requirements for financing purchase of a home,
22 including requirements concerning qualification of lenders (for example,
23 prohibition of seller financing or case-by-case approval of seller financing),
24 terms of financing (for example, a prohibition of balloon payment mortgages
25 and establishment of a minimum homeowner equity requirement), and financing
26 affordability (§ 982.632); PHA policy for payment of the HAP to the family or
27 lender (§ 982.635(d)); any PHA requirements for continuation of homeownership
28 assistance (§ 982.633(b)(8)); ~~and~~ PHA policy for determining the amount of
29 allowable homeownership expenses (§ 982.635(c)); and any PHA policies that
30 prohibit more than one move by the family during any one year period (§
31 982.637(b)(3)).

1 B. Who is Assisted

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

- 4 • A unit owned by the family - One or more family members hold title to
5 the home.
- 6 • A cooperative unit - One or more family members hold membership
7 shares in the cooperative.

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

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

- 16 • A "first-time homeowner"; and
- 17 • A family that owns or is acquiring shares in a cooperative.

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

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

31 To qualify as a "first-time homeowner," the assisted family may not

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

9 The restriction to "first-time" homeowners is intended to direct
10 homeownership assistance to "new" homeowners who may be unable to purchase a
11 home without this assistance, but to discourage use of Section 8 subsidy on
12 behalf of families who have achieved homeownership independently, without
13 benefit of the Federal Section 8 subsidy. In addition, the PHA may not
14 commence homeownership assistance for a family if any family member has
15 previously received assistance under the homeownership option, and has
16 defaulted on a mortgage securing debt incurred to purchase the home (see §
17 982.627(e) of this final rule).

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

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

1 program, the law has provided that with respect to members of a cooperative,
2 "rent" means the charges under the occupancy agreements between the members
3 and the cooperative (42 U.S.C. 1437f(f)(5)). Thus Section 8 assistance is
4 paid to cover the difference between the cooperative occupancy charges and the
5 income-based tenant rent.

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

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

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

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

1 unit in the cooperative, and the right to participate in management of the
2 housing.

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

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

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

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

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

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

7 If the contract unit and premises are not properly maintained, the PHA may
8 exercise all available remedies, regardless of whether the family or the owner
9 is responsible for such breach of the HQS. PHA remedies for breach of the HQS
10 include recovery of overpayments, suspension of housing assistance payments,
11 abatement or other reduction of housing assistance payments, termination of
12 housing assistance payments and termination of the HAP contract
13 (§ 982.619(d)(1)).

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

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

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

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

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

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

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

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

31 At that point in time, the PHA will determine whether the family is eligible

for Section 8 homeownership assistance (e.g., whether the family meets the income and employment thresholds and any other criteria established by the PHA). If determined eligible for a homeownership voucher, the family will then arrange for an independent home inspection, attend counseling sessions, and obtain financing. Homeownership assistance will begin when the family purchases the home and after all of the requirements of the homeownership option are met.

C. How to Qualify for Homeownership Assistance

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

- The family satisfies the minimum income requirements described in § 982.627(c) of the final rule;
- The family satisfies the employment requirements described in § 982.627(d) of the final rule;
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option (see § 982.627(e) of the final rule);
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, no family member has a present homeownership interest in a residence at the commencement of homeownership assistance for the purchase of any home;
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered into a contract of sale in accordance with § 982.630(c);
- The family satisfies any other initial requirements established by the PHA.

2. Minimum income requirement. To enter the Section 8 voucher program,

1 a family must be income-eligible (i.e., below the maximum income cutoff).
2 However, to qualify for the homeownership option in the voucher program, the
3 family must demonstrate sufficient income to meet a minimum income standard,
4 which is intended to assure that a family will have sufficient income to pay
5 homeownership and other family expenses not covered by the Section 8 subsidy.

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

10 At the request of several public commenters, the final rule establishes
11 a national minimum income requirement that is equal to 2,000 hours of yearly
12 full-time work at the Federal minimum wage. ~~A PHA, however, shall approve a~~
13 ~~family for participation that cannot otherwise demonstrate compliance with~~
14 ~~this standard, if the PHA determines that the family's circumstances indicate~~
15 ~~reasonable prospects to participate successfully in the homeownership option.~~
16 In response to public comment, the final rule also provides that the adult
17 family members who will own the home at the commencement of the homeownership
18 assistance (as opposed to only the head of household or spouse) must have
19 qualified monthly income (gross income) that is not less than the minimum
20 income requirement.

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

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

3 The law provides that the income counted in meeting any minimum income
4 requirement under the homeownership option must come from sources other than
5 welfare assistance. Thus, PHAs may limit homeownership assistance to families
6 with substantial non-welfare income available to pay housing and non-housing
7 costs. However, the law provides that HUD may count welfare assistance in
8 determining availability of voucher homeownership assistance for an elderly or
9 disabled family (in which the household head or spouse is an elderly or
10 disabled person). (The term "welfare assistance" is defined in HUD's
11 regulations at § 5.603, thereby identifying the types of income that may not
12 be included in determining whether a family meets the homeownership minimum
13 income standard.)

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

22 Under the law, HUD may permit PHAs to count welfare assistance income of
23 an "elderly family" or a "disabled family" - a family whose head or spouse is
24 elderly or disabled (definitions of these terms are found in section
25 3(b)(3)(B) of the 1937 Act; 42 U.S.C. 1437a(b)(3)(B)) - in determining whether
26 a family has the minimum income to qualify for homeownership assistance. On
27 consideration of this issue, and recognizing the special needs of such
28 families, the rule requires that the PHA count welfare assistance of an
29 elderly or disabled family in determining whether the family meets the minimum
30 income requirement for homeownership assistance. This requirement to count
31 welfare assistance in determining whether a family has the minimum income to

1 qualify for homeownership assistance only applies, however, to families which
2 satisfy the statutory definition of an elderly or disabled family. In
3 particular, as required by the law, the requirement to count welfare
4 assistance income does not apply in the case of a family that includes a
5 disabled person other than the household head or spouse (and where the
6 household head or spouse are not elderly or disabled).

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

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

15 • Is currently employed on a full-time basis (the term "full-time
16 employment" is defined to mean not less than an average of 30 hours per week);
17 and

18 • Has been continuously so employed during the year before commencement
19 of homeownership assistance for the family.

20 The final rule provides that the PHA has the discretion to determine
21 whether (and to what extent) an employment interruption is considered
22 permissible in satisfying the employment requirement. The final rule also
23 clarifies that the PHA may consider successive employment during the one-year
24 period and self-employment in a business.

25 The employment requirement does not apply to an elderly family or a
26 disabled family. Furthermore, if a family, other than an elderly family or a
27 disabled family, includes a person with disabilities, the PHA must grant an
28 exemption from the employment requirement if the PHA determines that an
29 exemption is needed as a reasonable accommodation so that the program is
30 readily accessible to and usable by persons with disabilities.

31 4. Discussion of other requirements

1 a. Homeownership counseling. Section 8(y) provides that a family that
2 receives assistance under the homeownership option must participate in a
3 homeownership and housing counseling program provided by the PHA (42 U.S.C.
4 1437f(y)(1)(D)). The rule provides that, before commencement of homeownership
5 assistance for a family, the family must attend and satisfactorily complete
6 the pre-assistance homeownership and housing counseling program required by
7 the PHA (pre-assistance counseling) (§ 982.630). Suggested topics for the
8 PHA-required pre-assistance counseling program include:

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

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

1 The counseling may be provided by the PHA, another entity such as a HUD-
2 approved housing counseling agency, or by both the PHA and another entity.
3 HUD-approved housing counseling agencies provide free counseling. The HUD
4 field office will provide the PHA with a list of the HUD-approved counseling
5 agencies. If the PHA is not using a HUD-approved housing counseling agency to
6 provide the counseling for families participating in the homeownership option,
7 the PHA should ensure that its counseling program is consistent with the
8 homeownership counseling provided under HUD's Housing Counseling program.

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

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

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

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

29 Another purpose of the PHA financing review would be to determine
30 whether the monthly mortgage or loan payment is affordable after considering
31 other family expenses. The PHA may disapprove proposed financing, refinancing

1 or other debt if the PHA determines that the debt is unaffordable. PHAs may
2 wish to establish minimum initial downpayment requirements to ensure that the
3 family has a personal financial stake in the home, thus helping to minimize
4 mortgage loan defaults (for example, the PHA may require that the family use
5 its own resources to make the entire initial downpayment, or a percentage of
6 the initial downpayment).

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

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

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

26 The other inspection required by this final rule is a statutory
27 requirement that is consistent with private real estate practice. The
28 independent professional home inspection is conducted by a private market home
29 inspector (not PHA staff) that is experienced and qualified to conduct
30 prepurchase inspections for homebuyers. The purpose of the home inspection is
31 the identification of home defects and an assessment of the adequacy and life

1 span of the major building components, building systems, appliances and other
2 structural components. The requirement for an inspection arranged by the
3 buyer and satisfactory to the buyer is a typical contingency clause in
4 contracts of sale. The Section 8 family selects the home inspector and pays
5 the home inspector's fees. (The source of funds for family payment of the
6 home inspection may be a gift, family savings or an inheritance, or sources
7 other than family savings.) A copy of the inspection report is provided to
8 the family and the PHA.

9 Although the PHA may not require the family to use a particular
10 inspector, the PHA may establish standards for qualification of the home
11 inspector selected by the family. For example, the PHA may require the use of
12 a home inspector certified by the American Society of Home Inspectors, or a
13 similar national organization.

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

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

30 • A Section 8 participant receiving voucher assistance may request a
31 PHA operating a homeownership program to determine whether the family is

1 eligible for Section 8 homeownership assistance. If the family is determined
 2 eligible for homeownership assistance, the PHA may authorize the family to
 3 search for a home to purchase. The family would continue to receive rental
 4 assistance until the family vacates the rental unit (consistent with the
 5 lease).

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

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

29 e. Portability. Generally, a family determined eligible for
 30 homeownership assistance by the initial PHA may purchase a unit outside of the
 31 initial PHA's jurisdiction, if the receiving PHA is administering a voucher

1 homeownership program and is accepting new homeownership families. In
2 general, the portability procedures for the Housing Choice Voucher program
3 (described in §§ 982.353 and 982.355) apply to the homeownership option and
4 the administrative responsibilities of the initial and receiving PHA are not
5 altered except to the extent that an administrative function (e.g, issuance
6 of a voucher or execution of a tenancy addendum) is not applicable to the
7 homeownership option.

8 The receiving PHA may absorb the homeownership family or bill the
9 initial PHA for the homeownership housing assistance using the normal
10 portability billing process. Communications between the initial and receiving
11 PHA are necessary. As is the case for Section 8 rental portable families, all
12 of the receiving PHA's administrative policies are applicable to the
13 homeownership family. The family will be required to attend the briefing and
14 counseling sessions required by the receiving PHA. The receiving PHA, not the
15 initial PHA, will determine whether the financing for and the physical
16 condition of the unit are acceptable.

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

21 As noted above, PHAs shall recapture a percentage of homeownership
22 assistance defined in the regulations upon the sale or refinancing of the
23 home. Proceeds invested in the purchase of another home are exempt from
24 recapture. Most of the homeownership requirements applicable to the first
25 home purchase remain applicable to a subsequent purchase. For example, the
26 family must once again meet the employment threshold. The necessity of any
27 counseling will be determined by the PHA. An independent home inspection will
28 be conducted and the PHA will determine the acceptability of the financing.
29 The maximum term of homeownership assistance applies to the cumulative time
30 the family receives homeownership assistance. The only exception to
31 eligibility requirements applicable to initial receipt of homeownership

1 assistance is that the family need not meet the first-time homebuyer
2 requirement (See § 982.637(b)).

3 g. Applicability of the Section 8 tenant-based voucher requirements to
4 the homeownership option. Section 982.641 details the portions of the voucher
5 regulations that apply to the homeownership special housing type. PHAs should
6 carefully review this section of the regulations.

7 It is noted that all civil rights laws applicable to the Section 8
8 voucher program are applicable to the homeownership program. PHAs must
9 comply with all equal opportunity and nondiscrimination requirements imposed
10 by contract or Federal law. In addition, PHAs are reminded that "finders-
11 keepers" applies to homeownership assistance; PHAs may not steer families to
12 particular units or neighborhoods. Further, as in the tenant-based rental
13 voucher program, PHAs must provide assistance to expand housing opportunities.

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

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

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

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

1 i. PHA determination of "homeownership expense". Section 982.635(c)
2 details the expenses that the PHA will include when determining the family's
3 homeownership expenses. The principal and interest amount is the debt service
4 amount for the initial (original) mortgage debt, any mortgage insurance
5 premium, and any refinancing of such debt. The utility allowance is the same
6 utility allowance schedule as used in the rental voucher program. The PHA
7 allowance for maintenance expenses is the amount the PHA thinks is appropriate
8 for routine maintenance for a home.

9 The PHA allowance for major repairs and replacements is the amount the
10 PHA thinks is appropriate for a replacement "reserve" for a home. If a member
11 of the family is a person with disabilities, such debt may include debt
12 incurred by the family to finance costs needed to make the home accessible for
13 such person, if the PHA determines that allowance of such costs as
14 homeownership expenses is needed as a reasonable accommodation so that the
15 homeownership option is readily accessible to and usable by such person, in
16 accordance with 24 CFR part 8.

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

25 26 **III. Summary of Changes Made by this Final Rule to the April 30, 1999**

27 **Proposed Rule**

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

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

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

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

17 4. Revised definition of the term "first-time homeowner" (§ 982.4(b)).
18 The definition of "first-time homeowner" has been revised to clarify that any
19 family who has owned any residential property during the preceding three years
20 (regardless of whether its is the family's principal residence) does not meet
21 the definition of a "first-time" homeowner. The final rule also clarifies
22 that a single parent or displaced homemaker who, while married, owned a home
23 with a spouse (or resided in a home owned by a spouse) is considered a "first-
24 time homeowner" for purposes of the Section 8 homeownership option.

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

30 Further, the revisions clarify that the PHA may not set aside program funds
31 or program slots for special housing types or for a specific special housing

1 type. These technical changes do not establish or modify existing program
2 requirements, but are designed solely to make § 982.601 easier to understand.

3 6. PHA capacity to operate successful Section 8 homeownership program
4 (§ 982.625(d)). This final rule adds a new § 982.625(d), which requires that
5 a PHA wishing to provide Section 8 homeownership assistance must have the
6 capacity to operate a successful homeownership program. The PHA has the
7 required capacity if it either:

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

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

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

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

30 7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and
31 982.628). For purposes of clarity, this final rule reorganizes the

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

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

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

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

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

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

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

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

13 19. RESPA and predatory lending as suggested counseling topics
14 (§ 982.630(b)(9)). The final rule expands the list of suggested housing
15 counseling topics to include information about the Real Estate Settlement
16 Procedures Act (12 U.S.C.2601 et seq.) (RESPA), state and Federal truth-in-
17 lending laws, and how to identify and avoid loans with oppressive terms and
18 conditions.

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

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

29 22. Seller certification in contract of sale that the seller is not
30 debarred, suspended, or subject to a limited denial of participation
31 (§ 982.631(c)(2)(v)). In response to public comment, the final rule provides

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

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

11 24. PHA approval of refinancing agreements or securing of additional
12 financing on the home (§ 982.632(c)). The final rule provides that the PHA
13 may establish requirements or other restrictions concerning refinancing of
14 debt incurred for the purchase of the home, or debt secured by the home.

15 25. PHA disapproval of lender qualifications and loan terms (§
16 982.632(d)). This final rule clarifies that the PHA may review lender
17 qualifications and the loan terms before authorizing homeownership assistance.

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

21 26. Prohibition on homeownership interest in second residence
22 (§ 982.633(b)(7)). This final rule clarifies that no family member may have a
23 present homeownership interest in a second residence while receiving
24 homeownership assistance.

25 27. Additional requirements for continuation of homeownership
26 assistance (§ 982.633(b)(8)). The final rule provides that the additional
27 requirements for continuation of homeownership assistance established by the
28 PHA may include a requirement for post-purchase homeownership counseling or
29 for periodic unit inspections while the family is receiving homeownership
30 assistance. With regards to post-purchase counseling, PHAs are encouraged to
31 at least provide the family written briefing materials covering the topics in

the PHA-required housing counseling program at the time of any refinancing of the initial debt, or the financing for improvement or repair of the home.

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

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

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

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

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

1 the family member, if the PHA determines that the allowance is needed as a
2 reasonable accommodation.

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

9 32. Homeownership assistance payments to lender or family
10 (§ 982.635(d)(2)). The final rule clarifies that, if the PHA decides to make
11 the homeownership assistance payments directly to the lender, and the
12 assistance payment exceeds the amount due to the lender, the PHA must pay the
13 excess amount directly to the family.

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

20 34. Clarification of portability procedures (§ 982.636). This final
21 rule clarifies the portability procedures for Section 8 homeownership
22 assistance. Generally, a family determined eligible for homeownership
23 assistance by the initial PHA may purchase a unit outside of the initial PHA's
24 jurisdiction, if the receiving PHA is administering a voucher homeownership
25 program and is accepting new homeownership families. In general, the
26 portability procedures for the Housing Choice Voucher program (described in
27 §§ 982.353 and 982.355) apply to the homeownership option and the
28 administrative responsibilities of the initial and receiving PHA are not
29 altered except to the extent that an administrative function (e.g, issuance
30 of a voucher or execution of a tenancy addendum) is not applicable to the
31 homeownership option.

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

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

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

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

The final rule requires that, upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by

1 HUD, and consistent with State and local law, that secures the PHA's right to
2 recapture the homeownership assistance. The lien securing the recapture of
3 homeownership subsidy may be subordinated to a refinanced mortgage. The
4 amount of homeownership assistance subject to recapture shall automatically be
5 reduced over a 10 year period, beginning one year from the purchase date, in
6 annual increments of 10 percent. At the end of the 10 year period, the amount
7 of the homeownership assistance subject to recapture will be zero.

8

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

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

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

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

A. Support for Proposed Rule

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

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

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.

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

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

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

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

D. Comments Regarding the Role of Nonprofits

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

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

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

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

E. Comments Regarding Income Targeting

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

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

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

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

Comment: Linking the FSS Program to Homeownership Option. One

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

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

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

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

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

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

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

H. Comments Regarding Mortgage Defaults.

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

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

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

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

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

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

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

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

J. General Questions About the Proposed Rule

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

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

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

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

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

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

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

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

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

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

VI. Discussion of Comments Regarding a Specific Regulatory Section

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

A. Definitions (§ 982.4)

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

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 FVAs. 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

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

C. Cooperative housing (§ 982.619).

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

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

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

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

determining the amount of monthly homeownership assistance payment (see § 982.634(c)(4)).

D. Homeownership option: General (§ 982.625)

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

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.

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

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

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

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

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

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

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

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

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

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

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

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 phase 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

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

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

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

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

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

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

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. ~~A PHA, however, shall approve a family for participation that~~
31 ~~cannot otherwise demonstrate compliance with this standard, if the PHA~~

~~determines that the family's circumstances indicate reasonable prospects to participate successfully in the homeownership option.~~ HUD believes that this standard is administratively straight-forward, and addresses the statutory ~~employment~~ income requirement without arbitrarily eliminating working families that are making no more than the minimum wage.

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

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

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

HUD Response. The purpose of the minimum income requirement is to

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

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

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

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

27 Comment: The employment requirement should be eliminated. Several
 28 commenters recommended elimination of this requirement. The commenter wrote
 29 that HUD should rely on lenders to determine what is an acceptable employment
 30 history, rather than establishing minimum employment requirements or
 31 permitting PHAs to establish such requirements. Other commenters wrote that,

1 since a minimum income requirement already exists, the employment requirement
 2 is redundant. The commenters suggested that, in the place of an employment
 3 requirement, HUD require a family to show proof that it earned the minimum
 4 income amount during the past year.

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

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

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

27 Comment: Requiring the "head of household or spouse" to meet employment
 28 requirement fails to acknowledge the varied structure of some families.
 29 Several commenters wrote that requiring the head of household or spouse to
 30 meet the employment requirements will disqualify many non-traditional
 31 families. In some extended families the head of household may be unemployed,

~~also choose to lengthen employment time by adopting additional eligibility criteria in accordance with § 982.620 (b) of this final rule.~~

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

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

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

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

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

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

HUD response. HUD agrees with the comment that permitting applicants to participate in the homeownership option will present PHAs with several significant challenges (such as defining a realistic search term for a first-time homebuyer without creating adverse impact on utilization rates and

administrative fees) that do not surface if the PHA limits the option to current rental participants. For this reason, HUD anticipates that most participants in the Section 8 homeownership program will be families currently participating in the tenant-based rental program. The time required for a current participant to locate and purchase a home will have a minimal impact on the PHA's lease-up rate or financial management activities since the family may continue to receive rental assistance in their rental unit during the search and settlement process. The decision to extend the homeownership option to applicants, participants, or both applicants and participants rests with the PHA.

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

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

Comment: The final rule should explicitly provide that if a family is unable to locate a home within the time limits, the PHA should be required to

1 issue a rental voucher or put the family at the top of the waiting list. One
2 commenter made this suggestion.

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

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

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

22 K. Homeownership counseling (§ 982.629)

23 Comment: HUD should provide funding for homeownership counseling
24 services. Several commenters recommended that HUD provide additional funding
25 for homeownership counseling. One commenter suggested that HUD should make
26 the additional funds available through a demonstration program or competition.

27 Other commenters wrote that HUD should provide the necessary funding by
28 either an increase in the ongoing administrative fee or by making provisions
29 for approving release of the hard-to-house fee (currently available for
30 assisting large families to lease a unit).

31 HUD Response. HUD has not adopted these recommendations. There are no

1 additional appropriations made available for this purpose. Furthermore, PHAs
2 can partner with HUD-funded homeownership counseling agencies to provide the
3 necessary counseling. Since these agencies provide homeownership counseling
4 services at little or no charge, the cost incurred by the PHA would be
5 nominal. A list of the HUD-approved homeownership counseling agencies is
6 available from the HUD Housing Counseling Clearinghouse website
7 (<http://www.hudhcc.org/agencies/agencies.html>).

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

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

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

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

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

27 HUD response. The final rule clarifies that the PHA-required counseling
28 program should "generally" cover the topics listed in § 982.630. The final
29 rule also provides that the PHA may adapt the housing counseling topics to
30 local circumstances and the needs of individual families. Further, the final
31 rule provides that, if the PHA is not using a HUD-approved housing counseling

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

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

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

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

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

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

30 HUD response. After carefully considering the comments, HUD has not
31 changed the requirement that the unit must pass an initial HQS inspection

1 conducted by the PHA and also be subject to an independent professional home
2 inspection. Section 8(y) removes the requirement that the PHA conduct annual
3 HQS inspections, but does not eliminate the requirement that the unit
4 initially meet HQS before assistance payments may commence. The statute
5 specifically requires that the contract of sale provide for a pre-purchase
6 inspection by an independent professional, which is clearly separate and
7 distinct from the statutory HQS inspection.

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

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

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

29 Comment: The final rule should provide PHAs the discretion to modify
30 the inspection requirements for new homes. Several commenters wrote that
31 newly constructed homes often come with builder/contractor warranties and that

new homes have to pass a series of inspections by local authorities in order to receive a final certificate of occupancy. The commenters recommended that the final rule permit PHAs to establish more relaxed inspection standards for newly constructed homes.

HUD response. HUD has not provided PHAs with the discretion to relax or modify the inspection requirements for newly constructed homes. HUD does not believe that the inspection requirement will prove problematic for new homes.

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

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

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

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

HUD response. The independent home inspection is supposed to be independent of, not only the seller, but also the PHA. The HQS inspection, conducted prior to the time the family enters into a contract of sale and

1 contracts for the independent inspection, and the pre-assistance counseling
2 program should reduce the likelihood of the family having to incur the cost of
3 the inspection for numerous units.

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

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

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

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

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

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

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

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

28 Comment: The final rule should establish uniform qualification
29 requirements for lenders. One commenter wrote that examples of this type of
30 lender or financial program qualifications might include identifying specific
31 entities (such as conventional mortgage lenders) that regularly participate in

1 the downpayment or closing costs. However, the final rule continues to
2 provide that the PHA may establish a minimum equity requirement from the
3 family's personal resources, types of financing, and qualifications of
4 lenders. The PHA's administrative policy on these subjects might impact on
5 the extent to which seller contributions would be permissible. In addition,
6 individual lenders may have underwriting criteria impacting seller
7 contributions to the downpayment or closing costs, which would be applicable
8 regardless of the PHA policy regarding seller contributions.

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

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

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

24 HUD proposed this requirement to minimize the risk of default by
25 imposing a minimum underwriting standard. However, HUD agrees that imposing
26 FHA requirements on non-FHA loans would unduly restrict the availability of
27 financing vehicles and options for Section 8 homeownership families. FHA
28 underwriting requirements are in place for FHA mortgages to protect the
29 solvency of the FHA fund but may not necessarily be an appropriate standard
30 for non-FHA loans. In fact, mandating FHA underwriting standards would result
31 in eliminating desirable non-FHA financing options for families, such as

1 foundation funds or State programs for first-time homebuyers.

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

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

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

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

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

29 Comment: The family should obtain PHA approval prior to entering into
30 refinancing agreements or securing additional financing on the home (whether
31 to finance repairs, consolidate debts, or for any other reason) and the family

1 should secure counseling before such action. One commenter made this
2 suggestion.

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

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

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

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

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

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

30 Comment: What is the appropriate length of time to provide
31 homeownership assistance to the family? Several commenters wrote in support

1 of the ten year limit. Other commenters urged HUD to extend the 10 year
2 limit. Many of these commenters suggested that the maximum term be extended
3 to fifteen, twenty, or thirty years, to better reflect usual mortgage terms.
4 The commenters urging an extension of the maximum 10 year period stated that
5 the shorter term would discourage lenders and the secondary mortgage market
6 from participating in the program. Several of these commenters wrote that in
7 ten years it is unlikely that the amortized balance of a mortgage could be
8 refinanced at a monthly payment affordable to an unassisted homeowner,
9 therefore resulting in a large number of mortgage defaults. Accordingly, the
10 commenters stated that the maximum term might limit homeownership assistance
11 to higher income families able to afford the increased mortgage payments
12 following the termination of assistance. Further, low income families
13 concerned about defaulting at the end of the maximum term would be forced to
14 purchase in depressed real estate markets, such as minority and/or poverty
15 concentrated areas.

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

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

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

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

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

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

26 HUD understands the concerns raised by some of the commenters regarding
27 Section 8 homeowners who, due to circumstances beyond their control, are
28 unable to assume full responsibility for the monthly homeownership expenses at
29 the end of the maximum term. HUD encourages PHAs and families to
30 realistically assess the family's economic situation a year or so before the
31 conclusion of the maximum term of the homeownership assistance. The family

would then be in a position to decide whether it might be in the family's best interest to sell the property and revert to Section 8 rental assistance.

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

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

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

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

HUD response. The final rule clarifies that the time limit applies to

1 any member of the household who has an ownership interest in the unit during
 2 any time that homeownership payments are made, or is the spouse of any member
 3 of the household who has an ownership interest in the unit at the time
 4 homeownership payments are made.

5 P. Amount and distribution of monthly homeownership assistance payment
 6 (\$ 982.634)

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

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

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

29 HUD response. HUD does not need to revise the proposed rule to address
 30 this concern. The final rule retains the provision that protects the
 31 homeowner from decreases in the normally applicable payment standard. The

1 payment standard for a family receiving homeownership assistance is the
 2 greater of the payment standard at the commencement of homeownership
 3 assistance for occupancy of the home and the payment standard at the most
 4 recent regular reexamination of family income and composition since the
 5 commencement of homeownership assistance for occupancy of the home. This
 6 policy minimizes the risk of default due to decreases in the payment standard
 7 or changes in family composition.

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

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

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

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

31 The final rule clarifies that if the PHA decides to make the

1 homeownership assistance payment directly to the lender, and the assistance
2 payment exceeds the amount due to the lender, the PHA must pay the excess
3 amount directly to the family.

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

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

10 Comment: PHAs should be permitted to set a separate payment standard
11 for the homeownership program. Several commenters wrote that PHAs should have
12 the latitude to set a separate payment standard for the homeownership option.
13 For example, a payment standard of 95% of the Fair Market Rent (FMR) might
14 work for the rental market, but for the for-sale market a payment standard of
15 105% might be more appropriate. Another commenter wrote that, if the unit
16 selected by the participating family is new, the PHA should have the latitude
17 to adjust the payment standard to account for the superiority of the housing
18 unit.

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

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

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

30 Comment: Homeownership expenses should not include maintenance expenses
31 nor major repairs and replacements. One commenter wrote that these are

1 expenses that come with the risk of homeownership. The commenter wrote that
2 families participating in the program should have the means to maintain their
3 home and protect the investment without subsidy.

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

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

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

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

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

1 cooperative homeowner association.

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

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

19 Q. Portability (§ 982.635)

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

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

31 Several other commenters recommended that portability of assistance

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

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

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

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

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

Comment: A family should not be permitted to use the homeownership option more than once. One commenter questioned whether the policy permitting

1 a family to purchase multiple units with voucher assistance was a prudent use
2 of scarce housing subsidy dollars.

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

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

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

31 HUD response. HUD agrees with the commenters that it is appropriate for

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

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

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

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

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

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

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

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

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

31 Two commenters wrote that a family that defaults should be required to

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

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

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

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

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

31 The PHA may allow the family to move and receive rental assistance (except in

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

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

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

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

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

HUD response. HUD has not revised the rule to incorporate this suggestion. HUD believes the recommended change could negatively impact

lender participation and the sale of mortgages on the secondary market. Section 982.633(b)(6) of the final rule retains the requirement that the family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

S. Administrative fees (§ 982.637)

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

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

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

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

HUD response. HUD has not adopted this suggestion. PHAs may not charge families fees to participate in the homeownership program or for the normal

program responsibilities to be performed by the PHA. Although there are additional PHA upfront responsibilities associated with a family purchasing a home, the time necessary to perform the PHA's ongoing responsibilities will decrease since rent reasonableness and annual HQS inspections are not required in the homeownership program.

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

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

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

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

IX. Findings and Certifications

Paperwork Reduction Act

The homeownership option is a special housing type under 24 CFR part 982, subpart M, of the unified rule for the Section 8 tenant-based voucher program. The information collection requirements of the Section 8 rental voucher program approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) are not increased by the implementation of this new special housing type. While the rule

substitutes several variations to existing requirements under the normal Section 8 tenant-based program, the homeownership option does not increase the total reporting and recordkeeping burden resulting from the collection of information for the Section 8 voucher program. The following provisions of this final rule contain information collections: §§ 982.305, 982.629, 982.631, 982.633, and 982.638.

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

Environmental Impact

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

Unfunded Mandates Reform Act

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

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under executive Order 12866, Regulatory Planning and Review. OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in

section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Impact on Small Entities

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

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

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule is exclusively concerned with the establishment of an

alternative use of Section 8 rental voucher assistance. Specifically, the rule authorizes a PHA to provide tenant-based assistance for an eligible family that purchases a dwelling unit that will be occupied by the family. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

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

List of Subjects

24 CFR Part 5

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

24 CFR Part 903

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

24 CFR Part 982

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

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

PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

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

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

§ 5.603 Definitions.

* * * *

(d) * * *

Net family assets. * * *

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

* * * *

PART 903 -- PUBLIC HOUSING AGENCY PLANS

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

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

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

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

* * * *

(b) * * *

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be

1 included only to the extent this information is required for the PHA's
 2 participation in the public housing drug elimination program and the PHA
 3 anticipates participating in this program in the upcoming year. The
 4 information required by § 903.7(k) must be included only to the extent that
 5 the PHA participates in homeownership programs under section 8(y).

6 * * * * *

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

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

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

14 6. Amend § 982.4 as follows:

15 a. In paragraph (a)(4), remove the phrase "and utility reimbursement"
 16 to read "utility reimbursement and rental assistance";

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

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

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

26 **§ 982.4 Definitions.**

27 * * * * *

28 (b) * * *

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

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

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

Homeownership option. Assistance for a homeowner or cooperative member

under § 982.625 to § 982.638. A special housing type.

* * * *

Interest in the home. In the homeownership option:

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

(2) In the case of assistance for a cooperative member, "interest in the home" includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

* * * *

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular 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 to lease a unit.

* * * *

(b) * * *

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

* * * * *

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., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

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

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

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

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

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

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

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

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

(4) If the family has caused a breach of the HQS for which the family

is responsible, the PHA must take prompt and vigorous action to enforce such family obligations. The PHA may terminate assistance for violation of family obligations in accordance with § 982.552.

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

* * * * *

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

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

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

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

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

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

§ 982.626 Homeownership option: Initial requirements.

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

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

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

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

(b) Additional PHA requirements. Unless otherwise provided in this part, the PHA may limit homeownership assistance to families or purposes

1 defined by the PHA, and, ~~The PHA~~ may also prescribe additional requirements
2 for commencement of homeownership assistance for a family. Any such limits or
3 additional requirements must be described in the PHA administrative plan.

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

10
11 **§ 982.627 Homeownership option: Eligibility requirements for families.**

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

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

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

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

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

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

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

31 (7) Except for cooperative members who have acquired cooperative

1 the employment standard established by this paragraph.

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

6
7 **§ 982.628 Homeownership option: Eligible units.**

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

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

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

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

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

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

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

24
25 **§ 982.629 Homeownership option: Additional PHA requirements for family**
26 **search and purchase.**

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

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

31 (c) If the family is unable to purchase a home within the maximum time

1 established by the PHA, the PHA may issue the family a voucher to lease a unit
2 or place the family's name on the waiting list for a voucher.

3
4 **§ 982.630 Homeownership option: Homeownership counseling.**

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

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

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

1 homeownership assistance (ongoing counseling). If the PHA offers a program of
2 ongoing counseling for participants in the homeownership option, the PHA shall
3 have discretion to determine whether the family is required to participate in
4 the ongoing counseling.

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

9
10 **§ 982.631 Homeownership option: Home inspections and contract of sale.**

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

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

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

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

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

1 unit for assistance under the homeownership option because of information in
2 the inspection report.

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

7 (2) The contract of sale must:

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

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

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

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

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

20
21 **§ 982.632 Homeownership option: Financing purchase of home; affordability of**
22 **purchase.**

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

30 (b) If the purchase of the home is financed with FHA mortgage
31 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 the PHA.

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

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

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

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

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

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

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

(ii) In the case of assistance for a homeowner, the family may grant a

1 mortgage on the home for debt incurred to finance purchase of the home or any
2 refinancing of such debt.

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

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

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

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

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

18 (C) The family's homeownership expenses.

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

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

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

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

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

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

§ 982.634 Homeownership option: Maximum term of homeownership assistance.

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

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

(2) Ten years, in all other cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 family income and composition since the commencement of homeownership
2 assistance for occupancy of the home.

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

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

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

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

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

15 (iii) Home insurance;

16 (iv) The PHA allowance for maintenance expenses;

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

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

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

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

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

31 (ii) Principal and interest on initial debt incurred to finance

1 purchase of cooperative membership shares and any refinancing of such debt or
 2 other mortgage debt;

3 (iii) Home insurance;

4 (iv) The PHA allowance for maintenance expenses;

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

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

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

9 (4) If the home is a cooperative or condominium unit, homeownership
 10 expenses may also include cooperative or condominium operating charges or
 11 maintenance fees assessed by the condominium or cooperative homeowner
 12 association.

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

15 (1) Directly to the family or;

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

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

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

24
 25 **§ 982.636 Homeownership option: Portability.**

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

29 (b) Portability of homeownership assistance. Subject to § 982.353(b)
 30 and (c), § 982.552, and § 982.553, a family determined eligible for
 31 homeownership assistance by the initial PHA may purchase a unit outside of the

1 initial PHA's jurisdiction, if the receiving PHA is administering a voucher
2 homeownership program and is accepting new homeownership families.

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

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

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

19
20 **§ 982.637 Homeownership option: Move with continued tenant-based assistance.**

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

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

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

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

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

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

(c) When PHA may deny permission to move with continued assistance. The PHA may deny permission to move to a new unit with continued voucher assistance as follows:

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

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

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

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

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

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

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

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

(2) The family fails to demonstrate that:

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

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

§ 982.639 Homeownership option: Administrative fees.

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

§ 982.640 Homeownership option: Recapture of homeownership assistance.

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

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

subordinated to a refinanced mortgage.

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

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

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

(i) The costs of any capital expenditures;

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

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

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

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

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

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

(i) The costs of any capital expenditures;

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

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

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

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

§ 982.641 Homeownership option: Applicability of other requirements.

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

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

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

(3) Any provisions concerning PHA approval ~~to lease a unit~~ of the assisted tenancy;

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

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

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

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

~~(except that paragraphs § 982.314(c) and (d)(2) are applicable).~~

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

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

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

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

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

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

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

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

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

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

(1) Section 982.504 ~~4~~ (Voucher tenancy: Payment standard amount and schedule Maximum subsidy, FMR/exception rent limit);

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

(3) Section 982.517 (Utility allowance schedule).

(g) Subpart L requirements. The following provisions of this part 982,

subpart L, do not apply to assistance under the homeownership option:

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

(2) Section 982.551(d) (Missing HQS inspection); ~~and~~

(3) Section 982.551(e) (Violation of lease);

(4) Section 982.551(g) (Owner eviction notice); and

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

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

(1) Sections 982.602-982.619; and

(2) Sections 982.622-982.624.

Dated: _____

Harold Lucas, Assistant Secretary for
Public and Indian Housing

[FR-4427-F-02]