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Series/Staff Member: Margy Waller

Subseries:

OA/ID Number: 21587

FolderID:

Folder Title:

Section 8 Homeownership [binder] [3]

Stack:

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Row:

98

Section:

6

Shelf:

3

Position:

2

FAX TRANSMITTAL COVER SHEET**DATE:** July 25, 2000**TIME:** 6:10 pm**PAGES:** 4 (including this cover sheet)**TO:****RECIPIENT'S NAME:** Margy Waller**RECIPIENT'S FAX NO:** (202) 456-7431**RECIPIENT'S ADDRESS:** DPC**RECIPIENT'S TELEPHONE:** _____**FROM:****ORIGINATOR'S NAME:** Ariel Pereira**ORIGINATOR'S FAX NO:** (202) 401-0349**ORIGINATOR'S ADDRESS:** HUD/OGC-Regulations Division**ORIGINATOR'S 'PHONE:** (202) 708-3055**MESSAGE TO RECIPIENT:** **Re: EITC and Food Stamps Acts****Margy,**

**Attached are copies of the relevant provisions of the EITC and Food Stamps statutes.
Please do not hesitate to contact me if you have any questions or need additional information.**

**Thanks,
Ariel**

**cc: Joe Lackey
Andrea Jacobson**

(i)(2) Definitions, etc.

For purposes of paragraph (1) -

(i)(2)(A) Applicable calendar year

The term 'applicable calendar year' means -

- (i) 1986 in the case of the dollar amounts referred to in clause (i) of subparagraph (B), and
- (ii) 1987 in the case of the dollar amount referred to in clause (ii) of subparagraph (B).

(i)(2)(B) Dollar amounts

The dollar amounts referred to in this subparagraph are -

- (i) the \$5,714 dollar amounts contained in subsection (b)(1), and
- (ii) the \$9,000 amount contained in subsection (b)(1)(B)(ii).

(i)(3) Rounding

If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10).

(j) Coordination with certain means-tested programs

EITC
26 USC 32(j)

For purposes of -

- (1) the United States Housing Act of 1937,
- (2) title V of the Housing Act of 1949,
- (3) section 101 of the Housing and Urban Development Act of 1965,
- (4) sections 221(d)(3), 235, and 236 of the National Housing Act, and
- (5) the Food Stamp Act of 1977,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

SOURCE

(Added Pub. L. 94-12, title II, Sec. 204(a), Mar. 29, 1975, 89 Stat. 30, Sec. 43, and amended Pub. L. 94-164, Sec. 2(c), Dec. 23, 1975, 89 Stat. 971; Pub. L. 94-455, title IV, Sec. 401(c)(1)(B), (2), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95-600, title I, Sec. 104(a)-(e), 105(a), Nov. 6, 1978, 92 Stat. 2772, 2773; Pub. L. 95-615, Sec. 202(g)(5), formerly Sec. 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, redesignated and amended Pub. L. 96-222, title I, Sec. 101(a)(1), (2)(E), 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 194, 195, 223; Pub. L. 97-34, title I, Sec. 111(b)(2), 112(b)(3), Aug. 13,

US Code as of: 01/05/99

FOOD STAMPS
7 U.S.C 2017(f)

Sec. 2017. Value of allotment

- (a) Calculation
The value of the allotment which State agencies shall be authorized to issue to any households certified as eligible to participate in the food stamp program shall be equal to the cost to such households of the thrifty food plan reduced by an amount equal to 30 per centum of the household's income, as determined in accordance with section 2014(d) and (e) of this title, rounded to the nearest lower whole dollar: Provided, That for households of one and two persons the minimum allotment shall be \$10 per month.
- (b) Benefits not deemed income or resources for certain purposes
The value of benefits that may be provided under this chapter, whether through coupons, access devices, or otherwise ⁽¹⁾ shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of benefits under this chapter.
- (c) First month benefits prorated
 - (1) The value of the allotment issued to any eligible household for the initial month or other initial period for which an allotment is issued shall have a value which bears the same ratio to the value of the allotment for a full month or other initial period for which the allotment is issued as the number of days (from the date of application) remaining in the month or other initial period for which the allotment is issued bears to the total number of days in the month or other initial period for which the allotment is issued, except that no allotment may be issued to a household for the initial month or period if the value of the allotment which such household would otherwise be eligible to receive under this subsection is less than \$10. Households shall receive full months' allotments for all months within a certification period, except as provided in the first sentence of this paragraph with respect to an initial month.
 - (2) As used in this subsection, the term "initial month" means
 - (A) the first month for which an allotment is issued to a household, (B) the first month for which an allotment is issued to a household following any period in which such household was not participating in the food stamp program under this chapter after the expiration of a certification period or after the termination of the certification of a household, during a certification period, when the household ceased to be eligible after notice and an opportunity for a hearing under section 2020(e)(10) of this title, and (C) in the case of a migrant or seasonal farmworker household, the first month for which allotment is issued to a household that applies following any period of more than 30 days in which such household was not participating in the food stamp program after previous participation in such program.
 - (3) Optional combined allotment for expedited households. - A State agency may provide to an eligible household applying after the 15th day of a month, in lieu of the initial allotment of the household and the regular allotment of the household for the following month, an allotment that is equal to the total amount of the initial allotment and the first regular allotment. The allotment shall be provided in accordance with section 2020(e)(3) of this title in the case of a household that is not entitled to expedited service and in accordance with paragraphs (3) and (9) of section 2020(e) of this title in the case of a household that is entitled to expedited service.
- (d) Reduction of public assistance benefits
 - (1) In general
If the benefits of a household are reduced under a Federal, State, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an action required under the law or program, for the duration of

the reduction -

- (A) the household may not receive an increased allotment as the result of a decrease in the income of the household to the extent that the decrease is the result of the reduction; and
- (B) the State agency may reduce the allotment of the household by not more than 25 percent.
- (2) Rules and procedures
If the allotment of a household is reduced under this subsection for a failure to perform an action required under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), the State agency may use the rules and procedures that apply under part A of title IV of the Act to reduce the allotment under the food stamp program.
- (e) Allotments for households residing in centers
 - (1) In general
In the case of an individual who resides in a center for the purpose of a drug or alcoholic treatment program described in the last sentence of section 2012(i) of this title, a State agency may provide an allotment for the individual to -
 - (A) the center as an authorized representative of the individual for a period that is less than 1 month; and
 - (B) the individual, if the individual leaves the center.
 - (2) Direct payment
A State agency may require an individual referred to in paragraph (1) to designate the center in which the individual resides as the authorized representative of the individual for the purpose of receiving an allotment.

Footnotes

[1] So in original. Probably should be followed by a comma.



Margy Waller

07/19/2000 09:21:19 AM

.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP

cc: Andrea Kane/OPD/EOP

Subject: minimum income requirement

We are concerned that the proposed language is too ambiguous. PHAs may treat families in similar circumstances differently and unless expressly permitted to count EITC and food stamps may not - since they don't in almost all other circumstances.

Also - we still need to fix the reference to 2000 hours (annual #) because the section is about monthly income.

New Language

①

(c) Minimum income requirements. (1) At commencement of homeownership assistance for the family, the family must demonstrate that the qualified monthly income (gross income), as determined by the PHA in accordance with §5.609 of this chapter, of the adult family members who will own the home at commencement of homeownership assistance is not less than the Federal minimum hourly wage multiplied by 2,000 hours divided by twelve. A PHA, however, shall approve a family for participation that cannot otherwise demonstrate compliance with this paragraph, if the PHA determines that the family's circumstances indicate reasonable prospects to participate successfully in the homeownership option. **In making this determination, the PHA shall approve a family whose qualified monthly income, plus EITC and food stamps, is equivalent to or greater than the minimum income.**

② IDAs - language?



Margy Waller

07/18/2000 06:03:14 PM

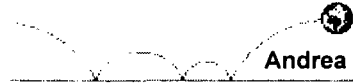
.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Re: income definition problem 

Ah, well. I tried.

What happened after I left today?
Andrea E. Jacobson



Andrea E. Jacobson

07/18/2000 03:36:30 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc: Joseph F. Lackey Jr./OMB/EOP@EOP
bcc:
Subject: Re: income definition problem 

Margy:

Before the meeting with HUD and Michael started on FMRs, I asked Rod about the language below and he said it was a "non-starter." He said they would draft new language giving broader authority to PHAs to determine which households are capable of being homeowners even when they do not meet the minimum income requirement. I know we're both weary of that approach, but lets see what they come up with.

Margy Waller



Margy Waller

07/17/2000 04:13:26 PM

.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: income definition problem

What about something like this?

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

Message Copied To: _____

Andrea Kane/OPD/EOP
rod_solomon@hud.gov @ inet
ariel_pereira@hud.gov @ inet
camille_e_acevedo@hud.gov
joseph f. lackey jr./omb/eop@eop
stuart shapiro/omb/eop@eop

► **Margy Waller**
07/17/2000 04:13:26 PM
.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
Subject: income definition problem

What about something like this?

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

Message Copied To: _____

Andrea Kane/OPD/EOP
rod_solomon@hud.gov @ inet
ariel_pereira@hud.gov @ inet
camille_e._acevedo@hud.gov
joseph f. lackey jr./omb/eop@eop
stuart shapiro/omb/eop@eop



Margy Waller

07/17/2000 12:45:34 PM

.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc: Records Management@EOP
Subject: Re: Sec 8 Homeownership: Conf Call 

In addition:

- 1) p. 13, ll., 21 - 22 ...minimum level of income
- 2) Has HUD dropped the plan to make veterans eligibie applicants? If so, when and why?
- 3) Review the new draft changes. (This should probably come first.)

Andrea E. Jacobson



Andrea E. Jacobson

07/17/2000 12:18:12 PM

Record Type: Record

To: Rod_Solomon@hud.gov, Ariel_Pereira@HUD.GOV, Camille_E._Acevedo@hud.gov
cc: Joseph F. Lackey Jr./OMB/EOP@EOP, Stuart Shapiro/OMB/EOP@EOP, Margy Waller/OPD/EOP@EOP
Subject: Sec 8 Homeownership: Conf Call

The agenda for today's call should include discussion on the following:

1. The definition of "income" as it applies to eligibility to the homeownership program.
2. How IDAs are considered when determining eligibility to the program.

and a few clarifications and/or small edits including the following:

(page and line numbers reference the 7/11 version of the rule)

3. Change #12 (p. 6, lines 18-21) Please change "**may** fulfill the employment requirement." to "**must** fulfill the employment requirement."
4. Change #32 (p. 10, lines 16-21 and p. 97 lines 11-13) I thought the automatic termination of homeownership assistance was going to mirror the Section 8 assistance

automatic termination language. Why has HUD added a hardship exception that is defined at the PHA level when such discretion does not exist for the regular Section 8 program?

5. (p. 17, line 10) The number 8 is missing after the word "Section."
6. (p. 50-51) Perhaps the predatory lending discussion can be summarized, stressing that HUD will revise this rule as appropriate to respond to the HUD-Treasury report, and repeated again before or after section VII of the preamble. I am concerned it will be buried in the public comment section and not seen. Don't we usually highlight intended future actions?
7. (p. 84, line 10) Change "its" to "it."

Message Copied To:

rod_solomon@hud.gov
ariel_pereira@hud.gov
camille_e._acevedo@hud.gov
joseph f. lackey jr./omb/eop@eop
stuart shapiro/omb/eop@eop



Margy Waller

07/14/2000 05:52:14 PM

.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc: adam.hoffberg/omb/eop@eop, alan.b.rhinesmith/omb/eop@eop, stuart.shapiro/omb/eop@eop, Andrea Kane/OPD/EOP
bcc: Records Management@EOP
Subject: Re: Sec 8 Homeownership Conference Call 

Andrea:

1) What are the substantive issues left on the table? Did you have any besides the following:

- a) definition of income for purposes of eligibility criteria
- b) impact of IDAs on applications (either having one, or wanting to use one for downpayment)

These are the only items I recall being suggested/requested. Is there language you are still expecting?

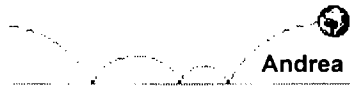
2) Regarding the preamble:

We are used to paying a lot of attention to the preamble. We use them to explain policy, market new policy, reach out to the targeted interest groups, impacted providers, etc. It is important to us that the Final Rule be usable as a stand-alone document, so that readers do not have to go searching for the NPRM and then sort out what is still relevant and accurate from the NPRM. We are making a serious effort to create reader friendly rules. For all of these reasons, we feel strongly that that the preamble language explaining how the program works etc. be included in this final rule. While I think there is a great deal more reorganizing that could be done in this final rule to make it user-friendly, I am only asking that the relevant explanatory material be included in the final draft.

I cannot guarantee that I will be prepared to discuss material I receive on Monday during the Monday afternoon call. I will do my best - but I almost never have time to read anything before 7 p.m. on any given day - except weekends.

I will be here for awhile tonite. Please call if you want to talk about any of this. Thanks.

Andrea E. Jacobson



Andrea E. Jacobson

07/14/2000 03:25:14 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc: Adam Hoffberg/OMB/EOP@EOP, Alan B. Rhinesmith/OMB/EOP@EOP, Stuart Shapiro/OMB/EOP@EOP
bcc:
Subject: Re: Sec 8 Homeownership Conference Call 

As Rod explained it to me, they are either including the preamble language you cited from the proposed rule or they are not. I will call again this afternoon to see if they have made a decision, since we will have to read any new language incorporated in the preamble. However, since we have already reviewed the old preamble language we would only have to conduct a very brief review to ensure that language has been revised to accurately reflect changes made to the final rule.

Regardless of whether they incorporate the old preamble language or not, I am not interested in canceling the Monday call for two reasons. First, we have other substantive issues to confirm and/or iron out within the rule text and second, we (the housing branch) have tended to focus less attention on the preamble language since it does not become a permanent record in the CFR. At times we have used the preamble as what I would call "compromise ground." Meaning, we stick things in there that we cannot persuade HUD to put in the rule text. But in general, we review the preamble for accuracy only and tend to defer to HUD on how it wants to summarize the rule text and public comments. I have not finished my review of the preamble, but thus far have not found a compelling reason to object to how it is written or organized.

Margy Waller



Margy Waller

07/14/2000 02:49:51 PM

.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc:
bcc:
Subject: Re: Sec 8 Homeownership Conference Call 

Well, if we are going to get new preamble language on Monday morning - I don't think we should do a call on Monday - unless they just want to use the time to explain what they did - and then set up another call for our feedback. As I think about it now - in the absence of a reply or change pages to my email from Wed. I don't think we should schedule a call for Monday - except for them to explain what they've done.

Andrea E. Jacobson



Andrea E. Jacobson

07/14/2000 02:44:37 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc:
bcc:
Subject: Re: Sec 8 Homeownership Conference Call 

OK. I'll ask HUD about the 1:30 time slot.

As for your email, I was just in a meeting with Rod at HUD for the last few hours (on another subject) and he said they are still considering how to proceed with the preamble language. We may see something this afternoon or it could be Monday morning.

Margy Waller

► **Margy Waller**
07/14/2000 02:42:46 PM
.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc:
bcc:
Subject: Re: Sec 8 Homeownership Conference Call 

thanks. 1:30?

I've not heard back from HUD regarding my email from Wednesday. Have you?
Andrea E. Jacobson

 **Andrea E. Jacobson** 07/14/2000 02:34:54 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc:
bcc:
Subject: Re: Sec 8 Homeownership Conference Call 

The afternoon is fine. Does any time in particular work best for you?

Margy Waller

► **Margy Waller**
07/14/2000 02:35:18 PM
.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP
cc:

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

do we need to get them our change pages before the call? it might make more sense to do it in the afternoon since we are doing our reading over the weekend, and may need to write our comments and questions in the morning. i am free at 10:30, but think they might like to do it in the afternoon so they can really review our questions and be prepared to answer.

Andrea E. Jacobson


Andrea E. Jacobson

07/14/2000 02:30:06 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP

cc:

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

How's 10:30 AM?

Margy Waller

► **Margy Waller**
07/14/2000 12:57:29 PM
.....

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP@EOP

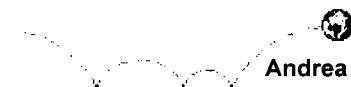
cc: See the distribution list at the bottom of this message

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

Monday is pretty open for me right now, too.

Andrea E. Jacobson


Andrea E. Jacobson

07/14/2000 10:06:30 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Adam Hoffberg/OMB/EOP@EOP

Subject: Sec 8 Homeownership Conference Call

Today is not feasible for me to participate in a conference call, as I still have not been able to review the entire rule yet. I would like to propose to have the next call on Monday, July 17th. My schedule is wide-open so I will wait to hear from you all on what's the best time.

Message Sent To:

Margy Waller/OPD/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
Rod_Solomon@hud.gov
Camille_E._Acevedo@hud.gov
Ariel_Pereira@HUD.GOV

Message Copied To:

stuart shapiro/omb/eop@eop
rod_solomon@hud.gov
camille_e._acevedo@hud.gov
ariel_pereira@hud.gov
adam hoffberg/omb/eop@eop

CC: CR

[Federal Register: November 23, 1998 (Volume 63, Number 225)]

[Notices]

[Page 64831-64833]

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[DOCID:fr23no98-170]

[[Page 64831]]

Part VIII

Department of Labor

Employment and Training Administration

Welfare-to-Work Grants; Performance Bonus Criteria; Notice

[[Page 64832]]

DEPARTMENT OF LABOR

Employment and Training Administration

Welfare-to-Work Grants; Performance Bonus Criteria

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of **Welfare**-to-Work performance bonus criteria.

SUMMARY: The Department of Labor (DOL) is responsible for administering **Welfare**-to-Work Grants as authorized by the Balanced Budget Act of 1997. This includes developing a formula and accompanying guidelines for awarding bonuses to successfully performing States. The Act stipulates that bonuses are to be awarded in FY 2000 and based on the performance of each State that is a **Welfare**-to-Work State in 1998 and 1999. DOL has consulted with the U.S. Department of Health and Human Services (DHHS), the National Governors' Association (NGA), the American Public Human Services Association (APHSA)--formerly American Public **Welfare** Association (APWA), and State and local **welfare** and

workforce officials in drafting these guidelines.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Chief, Division of Performance Management and Evaluation, Office of Policy and Research, United States Department of Labor, Employment and Training Administration, (202) 219-8680--not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997 amends the Social Security Act to authorize the U.S. Department of Labor to provide **Welfare-to-Work** Grants to States and local communities. The purpose of these grants is to create additional job opportunities for the hardest-to-serve recipients of Temporary Assistance for Needy Families (TANF) funds. Section 5001(a)(5)(E) of the Social Security Act enables successfully performing States in the **Welfare-to-Work** program to qualify for a bonus. The bonus shall be awarded by a formula which includes the following measures: placement in employment, employment retention, increase in earnings of such individuals, and such other factors as the Secretary deems appropriate. The formula may take into account general economic conditions on a State-by-State basis. The Secretary of Labor shall prescribe a performance threshold in a manner that ensures that the performance bonus grants to states equal the \$100,000,000 set aside for this purpose.

As DOL approaches the development of the **Welfare-to-Work** performance bonus formula and guidelines, certain factors make the process unique. The **Welfare-to-Work** program operates within the broader TANF and **welfare** reform effort. A set of ``High Performance Bonus'' guidelines for TANF performance in FY 1998 was issued by DHHS in March of 1998 with additional clarification issues August 13, 1998. While recognizing the unique nature of **Welfare-to-Work** grants, it is important that these two bonus systems are compatible. As currently authorized, the **Welfare-to-Work** performance bonus is a one-time process, unlike the TANF high performance bonus that will be ongoing over a period of five years. Thus, the **Welfare-to-Work** bonus criteria may differ from the TANF bonus criteria in certain respects and should also remain as straightforward as possible.

DOL has undertaken broad-based consultation with a workgroup of DHHS, NGA, and APHSA and State and local **welfare** and workforce officials to develop a bonus formula and guidelines for awarding the performance grants. The workgroup has achieved consensus on a set of **proposed** measures, explored the need and potential for economic adjustments, identified procedures for determining the amount of bonus awards, and examined the potential data sources for scoring States' performance in the context of the anticipated reporting burden.

II. Formula and Guidelines

This section presents the set of performance measures, the anticipated data sources, and the manner in which the bonus system will be applied and grant amounts determined.

A. Performance Measures

The performance measures reflect the three specified in the statute and the measures included in the TANF high performance bonus. They will include two job entry measures (basic rate and 30+ hour rate) and two post-placement measures (job retention and earnings gain).

1. Job Entry Rate: (a) Basic Rate = the number of participants entering employment for the first time divided by the total number of participants (i.e. the number of participants entering employment for the first time + the number of participants who are not employed + the number of participants entering employment not for the first time).

(b) 30+ Hour Rate = the number of participants entering employment of at least 30 hours per week, or increasing hours of subsidized and unsubsidized employment to 30 hours per week or greater for the first time, divided by the total number of participants (i.e. the number of participants entering or increasing to at least 30 hours of employment per week + the number who are not employed or who work fewer than 30 hours per week).

Explanation: Job entry is a fundamental feature of the **Welfare-to-Work** program. Providing two measures recognizes the importance of moving the hard-to-employ **Welfare-to-Work** participants into employment. At the same time, additional credit also should be given for promoting self-sufficiency by helping participants secure full-time employment, or jobs of at least 30 hours per week.

The time period for the measurement of both job entry measures will be from October 1, 1998 through September 30, 1999. This allows for the bonus criteria to apply when most States have reached a fully operational stage.

Credit for basic job entry will include both subsidized and unsubsidized employment and only the initial job entry for each participant in light of the importance of securing an initial attachment to the workforce. Basic job entry only counts for those jobs obtained while receiving services from a **Welfare-to-Work** entity. Credit for 30+ hour job entry will also include entry into both subsidized and unsubsidized employment, but includes an initial placement into a 30+ hour job and an increase in hours of weekly employment from less than 30 to 30 or more hours per week. Credit for 30 + hour job entry will include employment under 30 hours not obtained while receiving services from a **Welfare-to-Work** entity if the employment is increased to 30 or more hours while receiving services from the **Welfare-to-Work** entity. Unsubsidized employment will be defined as any type of employment that does not include a wage subsidy (e.g. a TANF wage subsidy or OJT). Subsidized employment counts as long as it is not fully subsidized employment or workfare, i.e. the amount paid to the individual exceeds the amount of the subsidy.

2. Job Retention rate = the number of participants employed in unsubsidized employment in the base quarter (Quarter 3: April 1 through June 30, 1999) who are retained in unsubsidized employment in the second subsequent quarter (Quarter 5: October 1 through December 31, 1999), divided by the number of participants employed in

[[Page 64833]]

unsubsidized employment in the base quarter (Q3).

3. Earnings Gain rate = the sum of the earnings of participants retained in unsubsidized employment in the second subsequent quarter (Q5) minus the sum of the earnings of that same group in the base quarter (Q3), divided by the sum of the earnings of that same group in the base quarter (Q3).

Explanation: The measures are based on a six-month time frame between the base quarter and the measurement quarter because at least six months are needed to see any significant earnings gains. The Act also suggests that job retention of at least 6 months is an appropriate outcome measure to use in evaluating the **Welfare-to-Work** program. Both retention and earnings are based solely on employment in unsubsidized jobs in light of the long-term goal of moving participants into unsubsidized employment. The third quarter was selected as the base period because it allows sufficient time for States to reach a steady state of program operations and have substantial numbers of participants in an employment retention phase. Measurement is limited to a single quarter because of the overall time limits on applying the bonus (measuring the FY 99 performance of FY 98 and 99 grantees for bonuses to be awarded in FY 2000).

B. Data Sources

The primary source of data to measure performance for bonus purposes will be the participant summary information included on the **Welfare-to-Work** Cumulative Quarterly Financial Status Report. States will automatically be considered for the **Welfare-to-Work** performance bonus by submitting the proper information on the Quarterly Financial Status Report. The primary source of data for filling out the participant information on these quarterly reports is anticipated to be Unemployment Insurance (UI) wage records. The recommended and preferable data source for earnings and retention measurement is UI wage records, with the measures and general approach having been set anticipating their use. DOL understands that there will be States that cannot or choose not to use UI wage records. States using other data sources for retention and earnings gain must justify the sufficiency of the other data collection methods to be used.

C. Bonus Allocation

Weighting the measures. The importance and influence of each of the measures can be reflected through the weighting of the measure. During the consultation on designing the bonus system, various views were expressed and considered. DOL has developed a weighting scheme as follows:

Job Entry Rate 60%
 (a) Basic Rate 40%
 (b) 30+ Hour Rate 20%
Retention and Earnings Rate 40%
 (a) Retention Rate 25%
 (b) Earnings Gain Rate 15%

Applying the formula. Statistical methods based on the distribution of States' performance levels for each performance measure will be used, both to determine which States can receive a bonus and to calculate the bonus amounts.

Determining eligibility. Each State's eligibility for receiving a bonus will be determined by a point system based on the extent to which the State performs above or below the national average for each measure. Assuming a normal distribution, a State will receive zero points for each measure on which it performs average or below average; one point for each measure on which it performs above average; and two points for each measure on which it performs significantly above average. If a State scores significantly below average on a specific measure, it will receive a score of negative one on that measure. In order to qualify for the bonus, a State must receive at least one point on one of the two job entry measures, plus at least one point on either the job retention or earnings gain measure. The extent of the standard deviation from the mean for each measure will be the basis for what determines above average (mean to one standard deviation above the mean), significantly above average (one or more standard deviations above the mean), and significantly below average (one or more standard deviations below the mean) performance.

Determining bonus amounts. Each State that qualifies for a bonus will be assigned a score according to the formula:

$$(W1)(X1) + (W2)(X2) + (W3)(X3) + (W4)(X4) = \text{total score}$$

(Where W represents the weight of the measure and X represents the score for each measure)

For example, if a State scores a 1 on basic job entry, 0 on 30+ hour job entry, a 2 on retention and a 1 on earnings gain, their score would be: $(40)(1) + (20)(0) + (25)(2) + (15)(1) = 105$

States will then be grouped according to their scores. Top

performers (135-200 points) will receive a set percentage of their original **Welfare**-to-Work grant amount. Second-level performers (100-134 points) and third-level performers (35-99 points) will receive proportionately lower percentages. Applying the percentages to the State's formula grant amount will scale the award to the size of the State. Percentages will be set based on final performance data in a manner that provides for the full distribution of the \$100,000,000 set aside for the bonus as required by the Act.

In order to avoid a single State receiving a disproportionately large bonus grant, caps are set at no more than 25% of a State's formula allotment, and no state may receive more than \$20,000,000 (20% of the bonus money available).

Equity adjustments. DOL, based on the consultation process and past experience with providing adjustment approaches for performance standards, acknowledges the need to take into account the different economic circumstances in States and localities. The two most important factors expected to influence performance are the unemployment rate statewide and the unemployment rate in areas of the State with a high concentration of **Welfare**-to-Work participants. There is no comparable program able to provide a database that would allow the development of a statistical model to confirm that assumption. Once performance data are received, they will be analyzed to determine the extent to which these or other economic factors influence program performance, and appropriate adjustments will be taken under consideration in the assessment of a State's performance. A supplemental notice outlining more specific unemployment adjustment procedures will be published as soon as it is available.

Signed at Washington, DC this 18th day of November 1998.

Dennis Lieberman,

Director, Office of **Welfare** to Work.

[FR Doc. 98-31224 Filed 11-20-98; 8:45 am]

BILLING CODE 4510-30-P

7.25.00

Sec 8
Homeownership

① Technical barrier
def of income used as

Steve Bayliss OJC

: Food Stamps may not be considered
as income for any purpose

~~FS~~ FS { The value of benefits shall not
be considered income for any
purpose

1) fax me a copy → of FS statute

From: Matthew D. McKearn on 07/24/2000 03:54:20 PM

Record Type: Record

To: Andrea Kane/OPD/EOP@EOP, Margy Waller/OPD/EOP@EOP, Ann O'Leary/OPD/EOP@EOP, Lauren Wittenberg/OMB/EOP@EOP

cc: Zoe M. Neuberger/OMB/EOP@EOP, Jack A. Smalligan/OMB/EOP@EOP

Subject: high performance bonus

Zoe and I talked about your proposed measure and agree that it is an acceptable surrogate measure for quality--if we can convince HHS that the data issues it presents can be overcome. Although the specifics of the measurement are complicated to explain, we think that the concept it addresses is straightforward -- higher reimbursement rates (relative to the market rate) are better, when balanced with increased coverage.

The proposed measure will require a new annual data collection, and a change in the way that States report their reimbursement rates and market survey data. According to the latest compendium of State plans, 38 States vary their payment rates by geographic region, and many States have 3 or more age specific payment rates. To compare payment rates as a proportion of market rates across States, each State will need to calculate a comparison of reimbursement to market rate for each age category for each sub-State area that has a local MSR, and the State will also need to report the number of children that receive each rate during a specified time period. The number of children receiving the rate is needed to calculate a meaningful State average rate. One way to diminish this burden would be to require reporting only for specific subgroups, for example, children under age 5. >

HHS will argue that the measure conflicts with two of their measure criteria -- increasing complexity and placing additional burdens on States, and that additional data collection and burden is not justified in the context of the high performance bonus. I think that we can legitimately argue that the discussion around the bonus has highlighted the need for improved information in this area and its collection has benefits that go well beyond its use in determining which States receive the bonus. HHS will also argue that States are free to choose the method for conducting market rate surveys, which undermines their validity for across-State comparisons. The high performance bonus affords an opportunity to have HHS issue guidance on what constitutes an acceptable MSR for the purposes of calculating the bonus, which we think is a plus, but again is contrary to HHS' stated goal of minimizing new administrative burden.]

7.25.00

child care

→ 10 states

big discretion to dump bad actors

→ absolute

⊙ preamble will say we can do improvement when we have better data



Margy Waller

07/18/2000 08:05:40 PM

.....

Record Type: Record

To:

cc:

Subject:

I've asked them to fix the 2000 hours requirement (that's annual, not monthly). I'll remind them.

How's this?

(c) Minimum income requirements. (1) At commencement of homeownership assistance for the family, the family must demonstrate that the qualified monthly income (gross income), as determined by the PHA in accordance with §5.609 of this chapter, of the adult family members who will own the home at commencement of homeownership assistance is not less than the Federal minimum hourly wage multiplied by 2,000 hours. A PHA, however, shall approve a family for participation that cannot otherwise demonstrate compliance with this paragraph, if the PHA determines that the family's circumstances indicate reasonable prospects to participate successfully in the homeownership option. **In making this determination, the PHA shall approve a family whose qualified monthly income, plus EITC and food stamps, is equivalent to or greater than the minimum income.**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 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 offers 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

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

8 9 II. Overview of the Section 8 Homeownership Program

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

13 A. General

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

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

- 26 • Establishes a minimum homeowner downpayment requirement of at least 3
27 percent for participation in its Section 8 homeownership program, and requires
28 that at least one percent of the minimum downpayment come from the family's
29 personal resources;
- 30 • Requires that financing for purchase of a home under its Section 8
31 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 its 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 non-
14 welfare income and a history of full-time employment. (The employment history
15 requirement is not applicable to elderly and disabled families, and there is a
16 modified income requirement for elderly and disabled families.) The program
17 is 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, 30 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

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

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

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

B. Who is Assisted

1. General. The homeownership option is used to assist families in two

1 types of housing:

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

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

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

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

14 • A "first-time homeowner"; and

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

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

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

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

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

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

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

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

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

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

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

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

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

28 • Membership shares. Shares in a cooperative. By owning such
29 cooperative shares, the share-owner has the right to reside in a particular
30 unit in the cooperative, and the right to participate in management of the
31 housing.

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

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

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

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

1 may terminate assistance for failure to perform maintenance in accordance with
2 the cooperative occupancy agreement (§ 982.619(d)(4)).

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

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

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

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

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

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

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

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

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

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

29 At that point in time, the PHA will determine whether the family is eligible
30 for Section 8 homeownership assistance (e.g., whether the family meets the
31 income and employment thresholds and any other criteria established by the

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

6 C. How to Qualify for Homeownership Assistance

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

- 14 • The family satisfies the minimum income requirements described in §
15 982.627(c) of the final rule;
- 16 • The family satisfies the employment requirements described in §
17 982.627(d) of the final rule;
- 18 • The family has not defaulted on a mortgage securing debt to purchase
19 a home under the homeownership option (see § 982.627(e) of the final rule);
- 20 • Except for cooperative members who have acquired cooperative
21 membership shares prior to the commencement of homeownership assistance, no
22 family member has a present homeownership interest in a residence at the
23 commencement of homeownership assistance for the purchase of any home;
- 24 • Except for cooperative members who have acquired cooperative
25 membership shares prior to the commencement of homeownership assistance, the
26 family has entered into a contract of sale in accordance with § 982.630(c);
- 27 • The family satisfies any other initial requirements established by
28 the PHA.

29 2. Minimum income requirement. To enter the Section 8 voucher program,
30 a family must be income-eligible (i.e., below the maximum income cutoff).
31 However, to qualify for the homeownership option in the voucher program, the

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

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

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

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

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

28 The law provides that the income counted in meeting any minimum income
29 requirement under the homeownership option must come from sources other than
30 welfare assistance. Thus, PHAs may limit homeownership assistance to families
31 with substantial non-welfare income available to pay housing and non-housing

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

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

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

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

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

9 • Is currently employed on a full-time basis; and
10 • Has been continuously so employed during the year before commencement
11 of homeownership assistance for the family.

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

17 The employment requirement does not apply to an elderly family or a
18 disabled family. Furthermore, if a family, other than an elderly family or a
19 disabled family, includes a person with disabilities, the PHA must grant an
20 exemption from the employment requirement if the PHA determines that an
21 exemption is needed as a reasonable accommodation so that the program is
22 readily accessible to and usable by persons with disabilities.

23 4. Discussion of other requirements

24 a. Homeownership counseling. Section 8(y) provides that a family that
25 receives assistance under the homeownership option must participate in a
26 homeownership and housing counseling program provided by the PHA (42 U.S.C.
27 1437f(y) (1) (D)). The rule provides that, before commencement of homeownership
28 assistance for a family, the family must attend and satisfactorily complete
29 the pre-assistance homeownership and housing counseling program required by
30 the PHA (pre-assistance counseling) (§ 982.630). Suggested topics for the
31 PHA-required pre-assistance counseling program include:

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

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

24 The counseling may be provided by the PHA, another entity such as a HUD-
25 approved housing counseling agency, or by both the PHA and another entity.
26 HUD-approved housing counseling agencies provide free counseling. The HUD
27 field office will provide the PHA with a list of the HUD-approved counseling
28 agencies. If the PHA is not using a HUD-approved housing counseling agency to
29 provide the counseling for families participating in the homeownership option,
30 the PHA should ensure that its counseling program is consistent with the
31 homeownership counseling provided under HUD's Housing Counseling program.

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

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

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

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

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

30 c. Home inspections. Two kinds of physical inspections are required in
31 the homeownership option (in addition to, and separate from, any lender

1 required inspections): an HQS inspection by the PHA and an independent
2 professional home inspection by an inspector that is used in the private
3 market by homebuyers. (§ 982.631).

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

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

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

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

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

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

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

29 • A Section 8 applicant selected from the PHA waiting list goes to the
30 briefing and learns of the homeownership option. The PHA determines the
31 family is eligible for homeownership and the family is given two months to

1 find a home to purchase. At the end of the two months the PHA extends the
2 search period for an additional month because the family has found a unit.
3 However, the purchase never occurs due to problems qualifying for a loan. The
4 family opts to rent an apartment and try homeownership at a later time after
5 they have increased their savings. The PHA issues the family a rental
6 voucher.

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

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

28 The receiving PHA may absorb the homeownership family or bill the
29 initial PHA for the homeownership housing assistance using the normal
30 portability billing process. Communications between the initial and receiving
31 PHA are necessary. As is the case for Section 8 rental portable families, all

1 of the receiving PHA's administrative policies are applicable to the
2 homeownership family. The family will be required to attend the briefing and
3 counseling sessions required by the receiving PHA. The receiving PHA, not the
4 initial PHA, will determine whether the financing for and the physical
5 condition of the unit are acceptable.

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

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

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

27 It is noted that all civil rights laws applicable to the Section 8
28 voucher program are applicable to the homeownership program. PHAs must
29 comply with all equal opportunity and nondiscrimination requirements imposed
30 by contract or Federal law. In addition, PHAs are reminded that "finders-
31 keepers" applies to homeownership assistance; PHAs may not steer families to

1 particular units or neighborhoods. Further, as in the tenant-based rental
2 voucher program, PHAs must provide assistance to expand housing opportunities.

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

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

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

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

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

29 The PHA allowance for major repairs and replacements is the amount the
30 PHA thinks is appropriate for a replacement "reserve" for a home. If a member
31 of the family is a person with disabilities, such debt may include debt

1 incurred by the family to finance costs needed to make the home accessible for
2 such person, if the PHA determines that allowance of such costs as
3 homeownership expenses is needed as a reasonable accommodation so that the
4 homeownership option is readily accessible to and usable by such person, in
5 accordance with 24 CFR part 8.

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

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

16 **Proposed Rule**

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

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

26 2. Use of the term "welfare assistance" rather than the term "public
27 assistance" (§ 982.4(a)). The final rule replaces the proposed definition of
28 the term "public assistance" with a cross-reference to the term "welfare
29 assistance", which is defined at 24 CFR 5.603. The proposed definition of
30 "public assistance" was redundant of HUD's existing definition of "welfare
31 assistance." Further, the use of the term "welfare assistance" in this final

rule will help to ensure the consistent use of defined terms throughout HUD's regulations.

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

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

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

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

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

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

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

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

11 7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and
12 982.628). For purposes of clarity, this final rule reorganizes the
13 eligibility requirements for participation in the homeownership option located
14 in §§ 982.626 and 982.627 of the proposed rule). Section 982.626 of the final
15 rule describes the initial requirements that must be satisfied before the
16 commencement of homeownership assistance. Section 982.627 of the final rule
17 sets forth the eligibility requirements (such as the minimum income and
18 employment requirements) for a families wishing to participate in the
19 homeownership option. Section 982.628 of the final rule describes the
20 eligibility requirements for homes purchased with homeownership assistance.
21 With the exception of those changes described elsewhere in this preamble, this
22 reorganization is not substantive, but is intended to clarify these regulatory
23 requirements. The substance of proposed § 982.628 and subsequent regulatory
24 sections have been redesignated to conform to the establishment of new §
25 982.628 (for example, proposed § 982.628 has become § 982.629 of this final
26 rule, proposed § 982.630 has become § 982.631, etc.).

27 8. Homeownership assistance as a reasonable accommodation
28 (§ 982.627(b)(3)). This final rule revises § 982.627 to clarify that a family
29 containing a family member with disabilities who requires homeownership
30 assistance as a reasonable accommodation is eligible for the homeownership
31 option, regardless of whether the family is a cooperative member or a first-

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

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

8 10. Establishment of national minimum income requirement
9 (§ 982.627(c)). At the request of several public commenters, the final rule
10 establishes a national minimum income requirement that is equal to 2,000 hours
11 of yearly full-time work at the Federal minimum wage.

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

18 12. 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) may fulfill the employment requirement

22 13. 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 ~~brief~~ employment interruption is considered permissible in
25 satisfying the employment requirement. The final rule also clarifies that the
26 PHA may consider successive employment during the one-year period and self-
27 employment in a business.

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

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

6 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 ~~concerning financing for~~
15 ~~improvement or repair of~~ debt secured by the home.

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

19 The PHA may disapprove proposed financing, refinancing or other debt
20 ~~financing for improvements or repairs~~ if the PHA determines that the debt is
21 unaffordable, or if the PHA determines that the lender or the loan terms do
22 not meet PHA qualifications.

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

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

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

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

11 28. Applicability of maximum term for homeownership assistance
12 (§ 982.634). The final rule clarifies that the maximum term for homeownership
13 assistance applies to any member of the household who has an ownership
14 interest in the unit during any time that homeownership payments are made, or
15 is the spouse of any member of the household who has an ownership interest in
16 the unit at the time homeownership payments are made.

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

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

30 29. Inclusion of accessibility modifications as homeownership expenses
31 (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the

2 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

3 24 CFR Parts 5 and 982

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

5 RIN: 2577-AB90

6 Section 8 Homeownership Program

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

8 ACTION: Final rule.

9 SUMMARY: This final rule implements the "homeownership option" authorized by
10 section 8(y) of the United States Housing Act of 1937, as amended by section
11 555 of the Quality Housing and Work Responsibility Act of 1998. Under the
12 section 8(y) homeownership option, a public housing agency may provide tenant-
13 based assistance to an eligible family that purchases a dwelling unit that
14 will be occupied by the family. This final rule follows publication of an
15 April 30, 1999 proposed rule, and takes into consideration the public comments
16 received on the proposed rule.

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

19 FOR FURTHER INFORMATION: Gerald J. Benoit, Office of Public and Indian
20 Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh
21 Street, SW, Washington, DC 20410; telephone (202) 708-0477. (This is not a
22 toll-free number.) Hearing or speech-impaired individuals may access this
23 number via TTY by calling the toll-free Federal Information Relay Service at
24 1-800-877-8339.

25 SUPPLEMENTARY INFORMATION:

26 I. Introduction

27 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 offers 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

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

8 9 II. Overview of the Section 8 Homeownership Program

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

13 A. General

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

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

- 26 • Establishes a minimum homeowner downpayment requirement of at least 3
27 percent for participation in its Section 8 homeownership program, and requires
28 that at least one percent of the minimum downpayment come from the family's
29 personal resources;
- 30 • Requires that financing for purchase of a home under its Section 8
31 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 its 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 non-
14 welfare income and a history of full-time employment. (The employment history
15 requirement is not applicable to elderly and disabled families, and there is a
16 modified income requirement for elderly and disabled families.) The program
17 is 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, 30 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 homeownership program (§ 982.626(b)); PHA maximum
18 times to locate and purchase a home (§ 982.629(a)); PHA policy about issuing
19 the family a rental voucher if the family does not find a suitable house to
20 buy (§§ 982.629(c)); any minimum cash downpayment or equity requirements (§
21 982.632); any requirements for financing purchase of a home, including
22 requirements concerning qualification of lenders (for example, prohibition of
23 seller financing or case-by-case approval of seller financing), terms of
24 financing (for example, a prohibition of balloon payment mortgages and
25 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)) .

30 B. Who is Assisted

31 1. General. The homeownership option is used to assist families in two

1 types of housing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 • Membership shares. Shares in a cooperative. By owning such
29 cooperative shares, the share-owner has the right to reside in a particular
30 unit in the cooperative, and the right to participate in management of the
31 housing.

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

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

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

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

1 may terminate assistance for failure to perform maintenance in accordance with
2 the cooperative occupancy agreement (§ 982.619(d)(4)).

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

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

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

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

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

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

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

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

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

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

29 At that point in time, the PHA will determine whether the family is eligible
30 for Section 8 homeownership assistance (e.g., whether the family meets the
31 income and employment thresholds and any other criteria established by the

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

6 C. How to Qualify for Homeownership Assistance

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

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

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

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

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

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

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

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

31 However, to qualify for the homeownership option in the voucher program, the

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

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

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

15 The law does not specify whether the minimum income requirement is only
16 applied at initial qualification for commencement of homeownership assistance,
17 or is also a continuing requirement that must be maintained so long as the
18 family is receiving assistance under the homeownership option. (By contrast,
19 the law explicitly provides that the statutory employment requirement only
20 applies at the time the family initially receives homeownership assistance.)
21 HUD has decided that any minimum income requirement will only be applied to
22 determine initial qualification to purchase a particular home, not as a
23 continuing requirement. This policy gives assurance to the family, and
24 possibly to a potential mortgage lender, that the stream of homeownership
25 assistance payments will not be disrupted because of a drop in family income.
26 Any minimum income requirement will only apply again if the family purchases
27 a subsequent home with Section 8 homeownership assistance.

28 The law provides that the income counted in meeting any minimum income
29 requirement under the homeownership option must come from sources other than
30 welfare assistance. Thus, PHAs may limit homeownership assistance to families
31 with substantial non-welfare income available to pay housing and non-housing

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

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

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

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

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

- 9 • Is currently employed on a full-time basis; and
10 • Has been continuously so employed during the year before commencement
11 of homeownership assistance for the family.

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

17 The employment requirement does not apply to an elderly family or a
18 disabled family. Furthermore, if a family, other than an elderly family or a
19 disabled family, includes a person with disabilities, the PHA must grant an
20 exemption from the employment requirement if the PHA determines that an
21 exemption is needed as a reasonable accommodation so that the program is
22 readily accessible to and usable by persons with disabilities.

23 4. Discussion of other requirements

24 a. Homeownership counseling. Section 8(y) provides that a family that
25 receives assistance under the homeownership option must participate in a
26 homeownership and housing counseling program provided by the PHA (42 U.S.C.
27 1437f(y) (1) (D)). The rule provides that, before commencement of homeownership
28 assistance for a family, the family must attend and satisfactorily complete
29 the pre-assistance homeownership and housing counseling program required by
30 the PHA (pre-assistance counseling) (§ 982.630). Suggested topics for the
31 PHA-required pre-assistance counseling program include:

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

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

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

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

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

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

30 c. Home inspections. Two kinds of physical inspections are required in
31 the homeownership option (in addition to, and separate from, any lender

1 required inspections): an HQS inspection by the PHA and an independent
2 professional home inspection by an inspector that is used in the private
3 market by homebuyers. (§ 982.631).

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

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

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

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

6 The PHA must review the home inspector's report to determine whether
7 repairs are necessary prior to purchase, and to generally assess whether the
8 purchase transaction makes sense in light of the overall condition of the home
9 and the likely costs of repairs and capital expenditures. For example, the
10 home inspector's report might reveal foundation instability, and a defective
11 roof and heating system that needs immediate replacement at great cost.

12 Confronted with these facts the PHA would discuss the inspection results with
13 the family and decide whether to disapprove the unit for assistance under the
14 homeownership option because of the major physical problems and substantial
15 correction costs, or whether it is feasible to have the necessary repairs
16 accomplished prior to sale.

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

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

29 • A Section 8 applicant selected from the PHA waiting list goes to the
30 briefing and learns of the homeownership option. The PHA determines the
31 family is eligible for homeownership and the family is given two months to

1 find a home to purchase. At the end of the two months the PHA extends the
2 search period for an additional month because the family has found a unit.
3 However, the purchase never occurs due to problems qualifying for a loan. The
4 family opts to rent an apartment and try homeownership at a later time after
5 they have increased their savings. The PHA issues the family a rental
6 voucher.

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

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

28 The receiving PHA may absorb the homeownership family or bill the
29 initial PHA for the homeownership housing assistance using the normal
30 portability billing process. Communications between the initial and receiving
31 PHA are necessary. As is the case for Section 8 rental portable families, all

1 of the receiving PHA's administrative policies are applicable to the
2 homeownership family. The family will be required to attend the briefing and
3 counseling sessions required by the receiving PHA. The receiving PHA, not the
4 initial PHA, will determine whether the financing for and the physical
5 condition of the unit are acceptable.

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

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

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

27 It is noted that all civil rights laws applicable to the Section 8
28 voucher program are applicable to the homeownership program. PHAs must
29 comply with all equal opportunity and nondiscrimination requirements imposed
30 by contract or Federal law. In addition, PHAs are reminded that "finders-
31 keepers" applies to homeownership assistance; PHAs may not steer families to

1 particular units or neighborhoods. Further, as in the tenant-based rental
2 voucher program, PHAs must provide assistance to expand housing opportunities.

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

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

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

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

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

29 The PHA allowance for major repairs and replacements is the amount the
30 PHA thinks is appropriate for a replacement "reserve" for a home. If a member
31 of the family is a person with disabilities, such debt may include debt

1 incurred by the family to finance costs needed to make the home accessible for
2 such person, if the PHA determines that allowance of such costs as
3 homeownership expenses is needed as a reasonable accommodation so that the
4 homeownership option is readily accessible to and usable by such person, in
5 accordance with 24 CFR part 8.

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

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

16 **Proposed Rule**

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

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

26 2. Use of the term "welfare assistance" rather than the term "public
27 assistance" (§ 982.4(a)). The final rule replaces the proposed definition of
28 the term "public assistance" with a cross-reference to the term "welfare
29 assistance", which is defined at 24 CFR 5.603. The proposed definition of
30 "public assistance" was redundant of HUD's existing definition of "welfare
31 assistance." Further, the use of the term "welfare assistance" in this final

rule will help to ensure the consistent use of defined terms throughout HUD's regulations.

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

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

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

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

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

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

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

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

11 7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and
12 982.628). For purposes of clarity, this final rule reorganizes the
13 eligibility requirements for participation in the homeownership option located
14 in §§ 982.626 and 982.627 of the proposed rule). Section 982.626 of the final
15 rule describes the initial requirements that must be satisfied before the
16 commencement of homeownership assistance. Section 982.627 of the final rule
17 sets forth the eligibility requirements (such as the minimum income and
18 employment requirements) for a families wishing to participate in the
19 homeownership option. Section 982.628 of the final rule describes the
20 eligibility requirements for homes purchased with homeownership assistance.
21 With the exception of those changes described elsewhere in this preamble, this
22 reorganization is not substantive, but is intended to clarify these regulatory
23 requirements. The substance of proposed § 982.628 and subsequent regulatory
24 sections have been redesignated to conform to the establishment of new §
25 982.628 (for example, proposed § 982.628 has become § 982.629 of this final
26 rule, proposed § 982.630 has become § 982.631, etc.).

27 8. Homeownership assistance as a reasonable accommodation
28 (§ 982.627(b)(3)). This final rule revises § 982.627 to clarify that a family
29 containing a family member with disabilities who requires homeownership
30 assistance as a reasonable accommodation is eligible for the homeownership
31 option, regardless of whether the family is a cooperative member or a first-

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

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

8 10. Establishment of national minimum income requirement
9 (§ 982.627(c)). At the request of several public commenters, the final rule
10 establishes a national minimum income requirement that is equal to 2,000 hours
11 of yearly full-time work at the Federal minimum wage.

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

18 12. 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) may fulfill the employment requirement

22 13. 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 ~~brief~~ employment interruption is considered permissible in
25 satisfying the employment requirement. The final rule also clarifies that the
26 PHA may consider successive employment during the one-year period and self-
27 employment in a business.

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

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

6 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 ~~concerning financing for~~
15 ~~improvement or repair of~~ debt secured by the home.

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

19 The PHA may disapprove proposed financing, refinancing or other debt
20 ~~financing for improvements or repairs~~ if the PHA determines that the debt is
21 unaffordable, or if the PHA determines that the lender or the loan terms do
22 not meet PHA qualifications.

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

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

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

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

11 28. Applicability of maximum term for homeownership assistance
12 (§ 982.634). The final rule clarifies that the maximum term for homeownership
13 assistance applies to any member of the household who has an ownership
14 interest in the unit during any time that homeownership payments are made, or
15 is the spouse of any member of the household who has an ownership interest in
16 the unit at the time homeownership payments are made.

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

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

30 29. Inclusion of accessibility modifications as homeownership expenses
31 (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the

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

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

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

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

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

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

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

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

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

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

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

10

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

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

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

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

17 **A. Support for Proposed Rule**

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

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

1 B. General Concerns About the Proposed Rule

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

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

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

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

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

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

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

29 C. Comments Regarding Persons with Disabilities

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

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

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

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

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

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

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

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

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

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

31 D. Comments Regarding the Role of Nonprofits

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

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

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

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

10 E. Comments Regarding Income Targeting

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

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

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

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

31 Comment: Linking the FSS Program to Homeownership Option. One

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

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

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

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

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

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

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

22 H. Comments Regarding Mortgage Defaults

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

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

1 I. Other General Comments

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

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

8
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(d) that
16 the PHA may limit homeownership assistance to families or purposes defined by
17 the PHA.

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

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

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

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

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

5 Comment: HUD should isolate Section 8 homeownership loans from other
6 FHA loans. One commenter wrote that loans under the Section 8 homeownership
7 program will likely have higher default ratios than other loans, and that
8 lenders originating these loans would be penalized when their default numbers
9 are higher than those of their peers who have not participated in the program.
10 Specifically, the commenter wrote that lenders participating in the Section 8
11 homeownership program might unfairly lose their FHA approved lender status.
12 Therefore, the commenter suggested that HUD's tracking systems should isolate
13 loans issued under the Section 8 homeownership program from other FHA loans.

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

17 J. General Questions About the Proposed Rule

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

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

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

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

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

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

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

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

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

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

20 21 VI. Discussion of Comments Regarding a Specific Regulatory Section

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

25 A. Definitions (§ 982.4)

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

1 insurance and permanent disability payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 C. Cooperative housing (§ 982.619).

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

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

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

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

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

D. Homeownership option: General (§ 982.625)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. Family Employment (§ 982.627(c))

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

HUD response. The employment requirement is statutory and the

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

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

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

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

31 HUD response. HUD agrees with the commenters and the final rule

1 provides that any of the adult family members who will own the home at
2 commencement of homeownership assistance may fulfill the employment
3 requirement.

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

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

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

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

30 Another commenter suggested that a family who defaulted on a previous
31 mortgage due to the death of a family member, or other circumstances beyond

1 the family's control, should not be prohibited from receiving future
2 homeownership assistance. The commenter suggested that the final rule should
3 permit the PHA to determine on a case-by-case basis whether the default was
4 beyond the family's control.

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

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

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

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

31 Comment: A family should be allowed more than two months to locate a

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

10 HUD response. Neither the April 30, 1999 proposed nor this final rule
11 place a two month limitation on the family's search for a home. Section
12 982.303 (term of voucher) is not applicable to the homeownership option (see §
13 982.641(b)). HUD has not adopted the suggestions to establish a minimum term
14 for family search and purchase. HUD believes this decision is properly left
15 to the administrative discretion of the PHA, as the housing market will vary
16 from community to community. However, in establishing such time limits, the
17 PHA should ensure that a family who has executed a sales contract is provided
18 reasonable time to close on the purchase of the home.

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

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

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

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

11 K. Homeownership counseling (\$ 982.629)

12 Comment: HUD should provide funding for homeownership counseling
13 services. Several commenters recommended that HUD provide additional funding
14 for homeownership counseling. One commenter suggested that HUD should make
15 the additional funds available through a demonstration program or competition.

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

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

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

30 HUD response. Family completion of the pre-assistance homeownership
31 counseling program is mandatory in order for homeownership assistance to

1 commence on behalf of the family. Since the PHA cannot charge a family any
2 type of fee to receive Section 8 assistance, the PHA may not a charge family a
3 fee or otherwise pass on any of the cost of the counseling to the family.

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

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

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

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

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

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

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

31 Comment: Dual inspection requirements. A number of commenters objected

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

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

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

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

1 whether a potential unit meets the HQS requirements of the program.

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

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

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

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

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

31 Comment: HQS inspections should be performed on a regular basis

1 throughout term of assistance. One commenter wrote that HQS inspections
2 should be required annually during the term of homeownership assistance.
3 Another commenter suggested that HQS inspections should be performed at least
4 once every two years at minimum. One commenter wrote that the PHA, or local
5 supportive service provider, should be given the option of performing annual
6 HQS inspections.

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

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

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

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

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

31 HUD response. HUD has not adopted this recommendation. The pre-

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

7 M. Financing purchase of home; affordability of purchase (\$ 982.631)

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

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

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

1 option.

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

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

22 PHAs are encouraged to analyze each loan (including refinancing or
23 financing for improvements or repairs) before providing assistance to
24 determine whether the lender and the loan meet its qualifications. While no
25 one set of abusive practices or terms characterizes a predatory mortgage loan,
26 PHAs should be particularly careful of loans with the following features:
27 loans in which financing costs represent a high percentage of the total loan
28 amount; loans that include high credit insurance premiums; balloon payments
29 that the borrower will be unable to repay; interest rates (including variable
30 rates) significantly higher than conventional mortgages; pre-payment
31 penalties, especially penalties that extend over long terms; high ratios of

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

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

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

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

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

30 HUD response. The proposed rule did not propose to establish a minimum
31 downpayment requirement, but proposed to grant the PHA flexibility to

1 establish a requirement for a minimum homeowner equity payment from the
2 family's personal resources. The final rule continues to provide this
3 flexibility to the PHA. A PHA may determine that a minimum contribution by
4 the family for the downpayment is appropriate to demonstrate the family's
5 commitment and readiness for the responsibilities of homeownership.

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

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

18 Comment: Use of FHA underwriting standards for non-FHA insured loans.
19 Several commenters supported the requirement that all loans under the Section
20 8 homeownership program meet FHA underwriting criteria. On the other hand,
21 other commenters wrote that the use of FHA underwriting standards would unduly
22 restrict the availability of properties available for purchase. These
23 commenters wrote that the use of FHA criteria would prevent families from
24 using other types of flexible mortgage financing designed to assist low-income
25 homebuyers. Some commenters also wrote that the added burden and restrictions
26 of complying with FHA requirements would deter lenders from participating in
27 the program.

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

1 single family mortgage loans.

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

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

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

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

31 HUD response. The final rule retains the broad PHA administrative

1 discretion to disapprove proposed financing if the PHA determines that the
2 debt for the purchase of the home is unaffordable. HUD believes that local
3 administrative flexibility is appropriate, and that the decisions as to what
4 level of debt is unaffordable or what terms of financing are appropriate are
5 best left to the PHA.

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

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

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

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

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

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

1 HUD response. HUD has not added evidence of payment of taxes as a
2 specific requirement for continued homeownership assistance in the final rule.

3 However, § 982.633(b)(7) permits PHAs to establish additional requirements
4 for the continuation of homeownership assistance, which could include such a
5 requirement. HUD believes that imposing a requirement of this type is best
6 left to the discretion of the individual PHA.

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

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

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

30 A couple of commenters wrote that the final rule should establish a
31 uniform maximum term instead of permitting a PHA to establish a maximum term

1 shorter than ten years. The commenters stated that without the availability
2 of a uniform program time period, lenders and other agencies likely to provide
3 subsidy assistance would find it difficult to develop national or regional
4 programs to support the homeownership option. However, other commenters
5 recommended that PHAs should have absolute flexibility to determine the
6 maximum term of assistance based on their local housing needs.

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

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

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

27 The final rule provides for a mandatory term limit on homeownership
28 assistance of 15 years if the initial mortgage incurred to finance purchase of
29 the home has a term that is 20 years or longer. In all other cases, the
30 maximum term of homeownership assistance is 10 years. HUD believes that a
31 family should be able to assume the full responsibility for monthly

1 homeownership expenses at the end of such time. HUD also believes that the
2 maximum term established by this final rule is sufficient to achieve broad
3 lender participation.

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

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

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

27 If, during the course of homeownership assistance, the family ceases to
28 qualify as a disabled or elderly family, the maximum term becomes applicable
29 from the date homeownership assistance commenced. However, such a family must
30 be provided at least 6 months of homeownership assistance after the maximum
31 term becomes applicable (provided the family is otherwise eligible to receive

1 homeownership assistance in accordance with this part).

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

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

14 P. Amount and distribution of monthly homeownership assistance payment
15 (\$ 982.634)

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

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

31 Comment: The final rule should provide that a stable bedroom-size

1 assistance level will be provided to the family throughout the life of the
2 mortgage. Three commenters worried that as children leave home Section 8
3 assistance levels would be reduced, therefore jeopardizing the ability of a
4 family to maintain its mortgage payments. The commenters wrote that such
5 fluctuating assistance levels would discourage lenders from participating in
6 the program.

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

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

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

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

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

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

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

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

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

22 For example, a payment standard of 95% of the Fair Market Rent (FMR) might
23 work for the rental market, but for the for-sale market a payment standard of
24 105% might be more appropriate. Another commenter wrote that, if the unit
25 selected by the participating family is new, the PHA should have the latitude
26 to adjust the payment standard to account for the superiority of the housing
27 unit.

28 HUD response. HUD has not made the recommended changes. The subsidy
29 level for a homeowner should not be higher than for a renter under the tenant-
30 based program. Fewer families would be assisted if HUD provided a higher
31 subsidy to homeowners. Also, it would not be equitable to provide larger

1 subsidies for families who are more likely (on average) to have higher incomes
2 than their counterparts receiving rental assistance.

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

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

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

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

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

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

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

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

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

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

28 Q. Portability (§ 982.635)

29 Comment: Applicability of portability to the homeownership program.
30 Several commenters suggested that homeownership assistance should be freely
31 portable. The commenters wrote that restricting portability would prohibit a

1 family living in a center city from pursuing job opportunities in suburban
2 areas where the homeownership option is not provided.

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

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

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

29 Comment: PHAs should be authorized to enter into homeownership
30 transactions outside their normal service areas, provided no other PHA runs a
31 homeownership program in that area. The commenter wrote that this policy

1 would follow the principle of promoting maximum portability wherever the PHA
2 is willing to administer the program.

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

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

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

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

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

30 Comment: The final rule should provide for the recapture of
31 homeownership assistance upon the sale or transfer of the home. Several

1 commenters made this suggestion. There was no consensus among these
2 commenters as to the extent of the recapture. Two of the commenters suggested
3 that recaptures should only apply to half of the homeownership assistance
4 payments made to or on behalf of the family. One of these commenters also
5 suggested that the PHA should use the recaptured proceeds to assist other
6 Section 8 families. Another commenter wrote that any recapture provision
7 should be designed to limit the amount of equity that a participant may
8 realize through the sale of a home under the Section 8 homeownership program.

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

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

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

1 homeownership subsidy may be subordinated to a refinanced mortgage.

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

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

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

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

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

30 Comment: What ramifications should a family default have on continued
31 participation in the rental program? Several commenters suggested that a

1 family that defaults on its mortgage should not be allowed to receive Section
2 8 rental assistance. The commenters recommended that the family should be
3 placed on the waiting list. However, there was no consensus among these
4 commenters regarding where on the waiting list the family should be placed.
5 For example, one commenter wrote that the family should not be penalized
6 through placement at the end of the waiting list. Another commenter, however,
7 recommended that a defaulting family should be placed at the bottom of the
8 Section 8 waiting list.

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

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

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

29 The final rule also retains the statutory provision that if the family
30 defaults on an FHA-insured mortgage, the PHA must terminate the Section 8
31 assistance and may not issue the family a rental voucher unless the family:

1 (1) moves from the unit within the specified time period established or
2 approved by HUD; and (2) conveys the title to the home, as required by HUD, to
3 HUD or HUD's designee. Even if the family complies with these requirements,
4 the PHA may still deny the family continued participation in the rental
5 voucher program, since the family did not comply with the family obligations
6 under § 982.633.

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

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

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

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

28 Section 8(y) provides for the mandatory termination of a family that
29 does not comply with HUD requirements to convey title and vacate the property
30 because the Federal government has a vested interest in protecting the FHA
31 insurance fund. HUD does not believe that it is appropriate to extend this

1 mandatory termination policy in the case of non-FHA mortgages. There may be
2 circumstances where the terms of the mortgage or the conditions for rapid
3 possession and title conveyance to the lender are not reasonable. The PHA
4 should have the discretion to decide how to address these situations.

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

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

14 S. Administrative fees (§ 982.637)

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

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

28 It is true that the PHA has some additional administrative duties for
29 homeownership families. However, there is a corresponding reduction in the
30 administrative responsibilities that the PHA must perform for a family
31 receiving rental assistance over the duration of the family's participation in

1 the program. For example, the PHA is not required to determine rent
2 reasonableness or conduct annual HQS inspections under the homeownership
3 option.

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

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

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

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

23 VIII. Findings and Certifications

24 Paperwork Reduction Act

25 The homeownership option is a special housing type under 24 CFR part
26 982, subpart M, of the unified rule for the Section 8 tenant-based voucher
27 program. The information collection requirements of the Section 8 rental
28 voucher program approved by the Office of Management and Budget (OMB) under
29 the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) are not increased by
30 the implementation of this new special housing type. While the rule
31 substitutes several variations to existing requirements under the normal

1 Section 8 tenant-based program, the homeownership option does not increase the
2 total reporting and recordkeeping burden resulting from the collection of
3 information for the Section 8 voucher program. The following provisions of
4 this final rule contain information collections: §§ 982.305, 982.629, 982.631,
5 982.633, and 982.638.

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

10 Environmental Impact

11 A Finding of No Significant Impact (FONSI) with respect to the
12 environment was made in accordance with HUD regulations in 24 CFR part 50 that
13 implement section 102(2)(C) of the National Environmental Policy Act of 1969
14 (42 U.S.C. 4223) at the proposed rule stage. That FONSI remains applicable to
15 this final rule and is available for public inspection between 7:30 a.m. and
16 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General
17 Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh
18 Street, SW, Washington, DC.

19 Unfunded Mandates Reform Act

20 Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-
21 1538) establishes requirements for Federal agencies to assess the effects of
22 their regulatory actions on State, local, and tribal governments and the
23 private sector. This final rule does not impose any Federal mandates on any
24 State, local, or tribal governments or the private sector within the meaning
25 of Unfunded Mandates Reform Act of 1995.

26 Executive Order 12866

27 The Office of Management and Budget (OMB) reviewed this final rule under
28 executive Order 12866, Regulatory Planning and Review. OMB determined that
29 this final rule is a "significant regulatory action," as defined in section
30 3(f) of the Order (although not economically significant, as provided in
31 section 3(f)(1) of the Order). Any changes made to the final rule subsequent

1 to its submission to OMB are identified in the docket file, which is available
2 for public inspection in the office of the Department's Rules Docket Clerk,
3 Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

4 Impact on Small Entities

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

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

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

24 Executive Order 13132, Federalism

25 Executive Order 13132 (entitled "Federalism") prohibits an agency from
26 publishing any rule that has federalism implications if the rule either
27 imposes substantial direct compliance costs on State and local governments and
28 is not required by statute, or the rule preempts State law, unless the agency
29 meets the consultation and funding requirements of section 6 of the Executive
30 Order. This final rule is exclusively concerned with the establishment of an
31 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 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 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 982 -- SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

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

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

4. Amend § 982.4 as follows:

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

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

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

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

1 § 982.4 Definitions.

2 * * * * *

3 (b) * * *

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

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

9 * * * * *

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

13 * * * * *

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

25 * * * * *

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

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

30 Homeownership assistance. In the homeownership option: Monthly
31 homeownership assistance payments by the PHA. Homeownership assistance

1 payment may be paid to the family, or to a mortgage lender on behalf of the
2 family.

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

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

8 * * * * *

9 Interest in the home. In the homeownership option:

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

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

17 * * * * *

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

22 * * * * *

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

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

31 * * * * *

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

§ 982.305 PHA approval to lease a unit.

* * * * *

(b) * * *

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

* * * * *

6. Add § 982.317 to read as follows:

§ 982.317 Lease-purchase agreements.

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

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

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

1 **§ 982.352 Eligible housing.**

2 (a) * * *

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

5 * * * * *

7 **Subpart M--Special Housing Types**

9 8. Amend § 982.601 as follows:

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

11 b. Remove paragraph (d);

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

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

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

16 **§ 982.601 Overview.**

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

19 (1) Single room occupancy (SRO) housing;

20 (2) Congregate housing;

21 (3) Group home;

22 (4) Shared housing;

23 (5) Manufactured home;

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

26 (7) Homeownership option.

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

homeownership option.

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

* * * * *

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

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

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

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

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

* * * * *

9. Amend § 982.619 as follows:

- a. Revise paragraph (a);
- b. Redesignate paragraph (d) as paragraph (e); and
- c. Add new paragraph (d).

§ 982.619 Cooperative housing.

(a) Assistance in cooperative housing. This section applies to rental

1 assistance for a cooperative member residing in cooperative housing. However,
2 this section does not apply to:

3 (1) Assistance for a cooperative member under the homeownership option
4 pursuant to § 982.625 through § 982.638; or

5 (2) Rental assistance for a family that leases a cooperative housing
6 unit from a cooperative member (such rental assistance is not a special
7 housing type, and is subject to requirements in other subparts of this part
8 982).

9 * * * * *

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

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

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

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

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

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

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

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

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

* * * * *

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

Homeownership Option

982.625 Homeownership option: General.
 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

1 home purchased and owned by one or more members of the family.

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

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

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

11 (1) The PHA establishes a minimum homeowner downpayment requirement of
12 at least 3 percent for participation in its Section 8 homeownership program,
13 and requires that at least one percent of the minimum downpayment come from
14 the family's personal resources;

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

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

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

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

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

26
27 **§ 982.626 Homeownership option: Initial requirements.**

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

31 (1) The family is qualified to receive homeownership assistance (see

1 § 982.627);

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

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

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

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

16
17 § 982.627 Homeownership option: Eligibility requirements for families.

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

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

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

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

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

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

1 section).

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

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

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

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

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

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

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

21 (c) Minimum income requirements. (1) At commencement of homeownership
22 assistance for the family, the family must demonstrate that the qualified
23 monthly income (gross income), as determined by the PHA in accordance with
24 § 5.609 of this chapter, of the adult family members who will own the home at
25 commencement of homeownership assistance is not less than the Federal minimum
26 hourly wage multiplied by 2,000 hours.

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

31 (ii) The disregard of welfare assistance income under paragraph

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

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

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

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

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

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

16 (i) Is currently employed on a full-time basis; 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 ~~brief~~ interruptions are considered to break continuity of employment
21 during the year. The PHA may count successive employment during the year.
22 The PHA 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 (e) Prohibition against mortgage defaults. The PHA shall not commence

1 homeownership assistance for a family if any family member has previously
2 received assistance under the homeownership option, and has defaulted on a
3 mortgage securing debt incurred to purchase the home.

4
5 **§ 982.628 Homeownership option: Eligible units.**

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

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

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

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

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

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

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

22
23 **§ 982.629 Homeownership option: Additional PHA requirements for family**
24 **search and purchase.**

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

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

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

§ 982.630 Homeownership option: Homeownership counseling.

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

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

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

1 have discretion to determine whether the family is required to participate in
2 the ongoing counseling.

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

7
8 **§ 982.631 Homeownership option: Home inspections and contract of sale.**

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

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

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

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

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

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

(2) The contract of sale must:

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

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

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

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

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

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

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

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

(c) The PHA may establish requirements or other restrictions concerning ~~refinancing of debt secured by incurred for purchase of the home, or~~

1 ~~concerning financing for improvement or repair of the home.~~

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

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

12
13 § 982.633 Homeownership option: Continued assistance requirements; Family
14 obligations.

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

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

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

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

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

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

1 refinancing of such debt.

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

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

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

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

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

17 (C) The family's homeownership expenses.

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

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

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

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

31 (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

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

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

10
11 § 982.635 Homeownership option: Amount and distribution of monthly
12 homeownership assistance payment.

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

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

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

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

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

- 26 (i) The payment standard (as determined in accordance with paragraphs
27 (b) (1) and (b) (2) of this section) at the commencement of homeownership
28 assistance for occupancy of the home; or
29 (ii) The payment standard (as determined in accordance with paragraphs
30 (b) (1) and (b) (2) of this section) at the most recent regular reexamination of
31 family income and composition since the commencement of homeownership

1 assistance for occupancy of the home.

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

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

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

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

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

14 (iii) Home insurance;

15 (iv) The PHA allowance for maintenance expenses;

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

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

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

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

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

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

1 other mortgage debt;

2 (iii) Home insurance;

3 (iv) The PHA allowance for maintenance expenses;

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

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

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

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

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

14 (1) Directly to the family or;

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

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

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

23
24 **§ 982.636 Homeownership option: Portability.**

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

28 (b) Portability of homeownership assistance. Subject to § 982.353(b)
29 and (c), § 982.552, and § 982.553, 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

homeownership program and is accepting new homeownership families.

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

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

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

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

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

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

(b) Requirements for continuation of homeownership assistance. The PHA must determine that all initial requirements listed in § 982.626 have been satisfied if a family that has received homeownership assistance wants to move

1 to a new unit with continued homeownership assistance. However, the
2 following requirements do not apply:

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

7 (2) The requirement that a family must be a first-time homeowner
8 (§ 982.627) is not applicable.

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

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

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

19
20 § 982.638 Homeownership option: Denial or termination of assistance for
21 family.

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

25 (b) Denial or termination of assistance under basic voucher program.
26 At any time, the PHA may deny or terminate homeownership assistance in
27 accordance with § 982.552 (Grounds for denial or termination of assistance) or
28 § 982.553 (Crime by family members).

29 (c) Failure to comply with family obligations. The PHA may deny or
30 terminate assistance for violation of participant obligations described in §
31 982.551 or § 982.633.

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

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

9 (2) The family fails to demonstrate that:

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

12 (ii) The family has moved from the home within the period established
13 or approved by HUD.
14

15 **§ 982.639 Homeownership option: Administrative fees.**

16 The ongoing administrative fee described in § 982.152(b) is paid to the
17 PHA for each month that homeownership assistance is paid by the PHA on behalf
18 of the family.
19

20 **§ 982.640 Homeownership option: Recapture of homeownership assistance.**

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

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

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

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

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

5 (i) The costs of any capital expenditures;

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

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

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

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

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

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

19 (i) The costs of any capital expenditures;

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

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

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

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

1 increments of 10 percent. At the end of the 10 year period, the amount of
2 homeownership assistance subject to recapture will be zero.

3
4 § 982.641 Homeownership option: Applicability of other requirements.

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

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

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

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

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

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

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

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

20 (2) Section 982.303 (Term of voucher);

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

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

23 (5) Section 982.307 (Tenant screening);

24 (6) Section 982.308 (Lease and tenancy);

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

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

27 (9) Section 982.311 (When assistance is paid) (except that
28 § 982.311(c) (3) is applicable to assistance under the homeownership option);

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

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

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

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

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

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

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

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

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

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

15 (e) Subpart J requirements. The requirements of this part 982, subpart
16 J (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451-
17 4576) do not apply to assistance under the homeownership option.

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

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

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

25 (3) Section 982.517 (Utility allowance schedule).

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

- (1) Section 982.551(c) (HQS breach caused by family);
- (2) Section 982.551(d) (Allowing HQS inspection); and
- (3) Section 982.551(j) (Interest in unit).

Dated: _____

Harold Lucas, Assistant Secretary for
Public and Indian Housing

[FR-4427-F-02]

● J. Eric Gould

07/17/2000 12:42:48 PM

Record Type: Record

To: Karin Kullman/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP
cc: Andrea Kane/OPD/EOP, Christina S. Ho/OPD/EOP@EOP
Subject: ADA Event on the 26th

See Marsha's memo below - I love this idea. Can we push it? The Lincoln Memorial totally ramps up the stature of this important event. Some selling points include:

President Clinton could be recognized for the most powerful image in disability community history. The National Council on Independent Living, which is sponsoring the March to Capitol Hill, first hoped (over a year ago) that they could host their rally at the Lincoln and then march to the Hill, but apparently they were instructed that they would be unable to secure the Lincoln Memorial. They wanted to host an event at the Lincoln Memorial to link the disability rights movement to other civil rights movements. They were struck by the conspicuous absence of a disability rights photo in the Lincoln exhibit. A large-scale and truly inclusive Anniversary celebration at the Lincoln Memorial could instantly become *the* ADA photo.

Selected Disability Community leaders love the idea of a Lincoln Memorial event. OPL has spoken with the disability organization leaders. They agree that an event at the Lincoln is the most promising message opportunity for the President and the community -- *perhaps even more than the White House*. If we could secure an event at the Lincoln, we would circumvent all but the slightest grumbling about not holding an event on the South Lawn.

A Lincoln Memorial event focusing on the ADA could be a venue for the President to highlight his broader civil rights commitments. An event at the Lincoln could underscore that symbolism, giving the President an opportunity to talk about such issues as Hate Crimes and Patients' Bill of Rights. This would build on the Anniversary event from last year, in which we had broad participation among the greater civil rights community.

A Lincoln Memorial event could command tremendous media attention. Martin Luther King, III lit the "Spirit of ADA" Torch in Atlanta from the MLK, Jr., "Eternal Flame," and he has expressed an interest in participating in events in Washington. We could, for example, have M. L. King, III and Justin Dart present the torch to the President. The Lincoln Memorial would symbolize the unity of all the civil rights communities, and their support for the Administration.

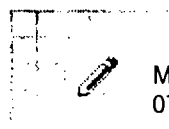
President Lincoln's themes of Liberty and Equality resonate powerfully in the Disability Community. People with disabilities often use the language of emancipation to describe their

situations. Moreover, many in the disability community recognize Lincoln as a President with a disability -- he is widely known for struggling with depression.

If for these and other reasons we were able to secure an event at the Lincoln Memorial instead of the FDR Memorial, a few possible ideas come to mind:

- The paved area at the base of the Lincoln Memorial would be ideally suited for comfortably accommodating for people using wheelchairs, as opposed to lawn areas.
- The need for complex staging could be eliminated by using the steps.
- The Lincoln Memorial is much easier to get to compared with the FDR Memorial. The disability community is already in discussions about in-kind transportation donations, and drop-offs by bus at the Lincoln would be comparatively simple.

----- Forwarded by J. Eric Gould/OPD/EOP on 07/17/2000 12:32 PM -----



Marsha Scott
07/14/2000 08:37:04 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Jonathan M. Young/WHO/EOP@EOP, J. Eric Gould/OPD/EOP@EOP

Subject: ADA Event on the 26th

Jonathan uncovered a very important historical fact concerning the original signing ceremony 10 years ago. Ginny Thornburgh, wife of Dick, had proposed that the signing take place at the Lincoln Memorial because many people could attend with and without disabilities and it symbolically encompassed the many civil rights groups that are allies of the disability communities. It was nixed and moved to the East Room (sound familiar!!!!) However, even then they were thinking; and the congressional sponsors joined with the community in demanding a larger venue. That is how it ended up on the south lawn. So why don't we go to the original site? We've been to the FDR memorial and the Lincoln has a much broader appeal and is a more easily accessed and recognizable symbol. What do you think? I really like it!!!!

I'm leaving for LA Monday morning but will stay in touch and want to be conferenced into any further planning meetings. Thanks.

Message Sent To:

Loretta M. Ucelli/WHO/EOP@EOP
Lisa M. Brown/OVP/EOP@EOP
Mary E. Cahill/WHO/EOP@EOP
Minyon Moore/WHO/EOP@EOP
Stephanie S. Streett/WHO/EOP@EOP

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, ~~902~~ and 982

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

RIN: 2577-AB90

Section 8 Homeownership Program

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

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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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 Section 8
16 Housing Choice Voucher program.

17 Homeownership assistance offers 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 Section 8 Housing Choice Voucher program. The PHA
24 may choose to make homeownership assistance available for any qualified
25 applicant or participant, or to restrict homeownership assistance to families
26 or purposes 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

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

8 9 **II. Summary of Changes Made by this Final Rule to the April 30, 1999 Proposed** 10 **Rule**

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

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

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

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

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

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

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

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

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

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

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

- Otherwise demonstrates in its Annual Plan that it has the capacity,

plan must be approved by HUD

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

11 7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and
12 982.628). For purposes of clarity, this final rule reorganizes the
13 eligibility requirements for participation in the homeownership option located
14 in ~~proposed~~ §§ 982.626 and 982.627 of the proposed rule). Section 982.626 of
15 the final rule describes the initial requirements that must be satisfied
16 before the commencement of homeownership assistance. Section 982.627 of the
17 final rule sets forth the eligibility requirements (such as the minimum income
18 and employment requirements) for a families wishing to participate in the
19 homeownership option. Section 982.628 of the final rule describes the
20 eligibility requirements for homes purchased with homeownership assistance.
21 With the exception of those changes described elsewhere in this preamble, this
22 reorganization is not substantive, but is intended to clarify these regulatory
23 requirements. The substance of proposed § 982.628 and subsequent regulatory
24 sections have been redesignated to conform to the establishment of new §
25 982.628 (for example, proposed § 982.628 has become § 982.629 of this final
26 rule, proposed § 982.630 has become § 982.631, etc.).

27 8. Homeownership assistance as a reasonable accommodation
28 (§ 982.627(b)(3)). This final rule revises § 982.627 to clarify that a family
29 containing a family member with disabilities who requires homeownership
30 assistance as a reasonable accommodation is eligible for the homeownership
31 option, regardless of whether the family is a cooperative member or a first-

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

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

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

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

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

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

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

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

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

6 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 concerning financing for
15 improvement or repair of the home.

16 24. PHA disapproval of lender qualifications and loan terms (§
17 982.632(d)). This final rule clarifies that the PHA may review lender
18 qualifications and the loan terms before authorizing homeownership assistance.
19 The PHA may disapprove proposed financing, refinancing or financing for
20 improvements or repairs if the PHA determines that the debt is unaffordable,
21 or if the PHA determines that the lender or the loan terms do not meet PHA
22 qualifications.

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

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

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

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

11 28. Applicability of maximum term for homeownership assistance
12 (§ 982.634). The final rule clarifies that the maximum term for homeownership
13 assistance applies to any member of the household who has an ownership
14 interest in the unit during any time that homeownership payments are made, or
15 is the spouse of any member of the household who has an ownership interest in
16 the unit at the time homeownership payments are made.

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

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

30 29. Inclusion of accessibility modifications as homeownership expenses
31 (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the

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

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

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

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

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

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

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

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

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

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

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

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

III. Overview of the Section 8 Homeownership Program

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

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

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

1 successful Section 8 homeownership program. The PHA has the required capacity
2 if it:

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

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

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

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

20 The PHA may limit the number of homeownership families and there are
21 statutory family eligibility requirements such as a minimum level of non-
22 welfare income and a history of full-time employment. (The employment history
23 requirement is not applicable to elderly and disabled families, and there is a
24 modified income requirement for elderly and disabled families.) The program
25 is generally limited to first-time homeowners. The PHA may add other local
26 eligibility requirements such as participation in the FSS program.

27 Once a family has been determined by the PHA to be eligible for Section
28 8 homeownership assistance, the family must attend homeownership counseling
29 sessions. The counseling may be done by PHA staff or another entity such as a
30 HUD-approved housing counseling agency. However, if the PHA is not using a
31 HUD-approved housing counseling agency to provide the counseling for families

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

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

11 A home may be purchased under the homeownership option if, at the time
12 the PHA determines that the family is eligible to purchase the home with
13 homeownership assistance, the home is either under construction or already
14 existing. Generally, a family determined eligible for homeownership
15 assistance by the initial PHA may purchase a unit outside of the initial PHA's
16 jurisdiction, if the receiving PHA is administering a voucher homeownership
17 program and is accepting new homeownership families. In general, the
18 portability procedures for the Housing Choice Voucher program (described in
19 §§ 982.353 and 982.355) apply to the homeownership option and the
20 administrative responsibilities of the initial and receiving PHA are not
21 altered except to the extent that an administrative function (e.g., issuance
22 of a voucher or execution of a tenancy addendum) is not applicable to the
23 homeownership option.

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

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

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

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

24 The amount of the housing assistance payment will be calculated using a
25 modified voucher program payment standard approach. The homeownership housing
26 assistance payment will equal the lower of (1) the payment standard minus the
27 total tenant payment or (2) the monthly homeownership expenses minus the total
28 tenant payment. The family is responsible for the monthly homeownership
29 expenses not reimbursed by the housing assistance payment. (Total tenant
30 payment is higher of the minimum rent, 10 percent of monthly income, 30
31 percent of monthly adjusted income, or the welfare rent.) There is no

1 shopping incentive in the homeownership option. The PHA must use the utility
2 allowance schedule and payment standard schedules applicable to the Section 8
3 voucher rental program.

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

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

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

30 PHAs shall recapture a percentage of homeownership assistance defined in
31 the regulations upon the sale or refinancing of the home. Sales proceeds that

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

7 A PHA opting to administer the Section 8 homeownership program must
8 establish local homeownership policies. The following policies must be
9 described in the PHA administrative plan: any additional PHA requirements for
10 participation in its Section homeownership program (§ 982.626(b)); PHA maximum
11 times to locate and purchase a home (§ 982.629(a)); PHA policy about issuing
12 the family a rental voucher if the family does not find a suitable house to
13 buy (§§ 982.629(c)); any minimum cash down payment or equity requirements (§
14 982.632); any requirements for financing purchase of a home, including
15 requirements concerning qualification of lenders (for example, prohibition of
16 seller financing or case-by-case approval of seller financing), terms of
17 financing (for example, a prohibition of balloon payment mortgages and
18 establishment of a minimum homeowner equity requirement), and financing
19 affordability (§ 982.632); PHA policy for payment of the HAP to the family or
20 lender (§ 982.635(d)); and any PHA requirements for continuation of
21 homeownership assistance (§ 982.633(b)(8)).

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

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

1 responses to these comments.

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

6
7 **V. Discussion of General Comments Not Regarding a Specific Regulatory Section**

8 **A. Support for Proposed Rule**

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

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

23 **B. General Concerns About the Proposed Rule**

24 Comment: HUD should prohibit or limit the use Section 8 rental
25 assistance funds for homeownership. Several commenters were opposed to the
26 concept of Section 8 homeownership. These commenters wrote that limited
27 Section 8 resources should be used solely to assist families in renting
28 decent, safe, and sanitary units. One of the commenters wrote that many
29 communities currently offer other programs with Community Development Block
30 Grant (CDBG), HOME, or state or local funding to assist prospective first-time
31 homebuyers. Several of the commenters suggested that HUD should establish

1 reasonable upper limits on the number or percentage of households that can use
2 the homeownership option, in order to protect the availability of rental
3 assistance for extremely low-income families. According to these commenters,
4 the homeownership option is geared toward families with relatively higher
5 incomes than the typical Section 8 rental program participant.

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

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

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

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

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

20 C. Comments Regarding Persons with Disabilities

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

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

30 Comment: The rule should require the PHA or a local supportive service
31 provider to annually review difficulties faced by persons with disabilities in

1 maintaining their mortgage payments or homes. The commenter submitting this
2 suggestion wrote that an annual review is necessary to ensure that: (1)
3 homeowners with disabilities continue to be able to access the supportive
4 services they choose; and (2) supportive service agencies and the PHA are
5 aware of any problems the family may be having.

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

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

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

28 HUD response. The provision of homeownership assistance as a reasonable
29 accommodation is determined on a case-by-case basis by the PHA. The PHA will
30 determine what is reasonable based on the specific circumstances and
31 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

1 requiring, or at least strongly encouraging, PHAs to partner with nonprofits
2 in the design and operation of Section 8 homeownership programs.

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

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

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

1 E. Comments Regarding Income Targeting

2 Comment: The final rule should clarify whether Section 8 homeownership
3 subsidies are subject to the same income targeting requirements as the Section
4 8 rental assistance program. A few commenters wrote that if the new income
5 targeting requirements of the Public Housing Reform Act apply, the
6 requirements will reduce the pool of families eligible for Section 8
7 homeownership assistance.

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

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

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

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

28 HUD response. There is no federal requirement that families must
29 participate in the FSS program as a condition of receiving homeownership
30 assistance. There is, however, PHA administrative flexibility to link the FSS
31 and homeownership programs. For example, the PHA may adopt local

1 homeownership eligibility requirements such as participation in the FSS
2 program. The PHA may opt to incorporate the homeownership goal in the
3 family's FSS contract of participation so any FSS escrow could be advanced for
4 purchase of a home or home maintenance/improvement purposes. HUD believes
5 that PHA discretion over this issue is appropriate and in keeping with the
6 intention to ensure there is sufficient PHA flexibility to address the local
7 community's needs and objectives in the administrative policies of the
8 program.

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

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

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

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

1 from Section 8 recipients.

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

13 H. Comments Regarding Mortgage Defaults

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

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

23 I. Other General Comments

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

27 The PHA may choose to make homeownership assistance freely available for
 28 any qualified applicant or participant, or to restrict homeownership
 29 assistance to families or purposes defined by the agency. (64 FR 23488)
 30

31 One commenter wrote that the proposed regulatory text does not contain
 32 comparable language. The commenter wrote that a PHA should have the
 33 discretion to limit application of its Section 8 homeownership program, in

1 whole or in part, to achieve local housing goals or priorities. Accordingly,
2 the commenter suggested that the final rule contain regulatory text equivalent
3 to the quoted preamble language.

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

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

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

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

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

27 Comment: HUD should isolate Section 8 homeownership loans from other
28 FHA loans. One commenter wrote that loans under the Section 8 homeownership
29 program will likely have higher default ratios than other loans, and that
30 lenders originating these loans would be penalized when their default numbers
31 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.

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

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

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

11 12 VI. Discussion of Comments Regarding a Specific Regulatory Section

13 For the convenience of readers, the discussion that follows is organized
14 by the regulatory section of the proposed rule it pertains to (e.g.,
15 § 982.625, § 982.633, etc.).

16 A. Definitions (§ 982.4)

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

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

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

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

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

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

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

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

27 One commenter wrote that Section 8 families opting for homeownership
28 through a lease-purchase arrangement should be required to satisfy at least
29 half the continuous employment and half the required counseling requirements
30 at the time they enter the lease-purchase program. The commenter wrote that,
31 since lease-purchase families typically have credit-history problems to clear

1 up over time, it would be onerous to impose all of the homeownership
2 requirements on the family at the time of their entrance into the program.

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

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

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

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

27 C. Cooperative housing (§ 982.619).

28 Comment: Final rule should clarify that the occupancy agreement
29 controls not only the allocation of maintenance responsibility between the
30 cooperative member and the cooperative, but also the rules to which the
31 Section 8 assisted members are subject. Several commenters wrote that

1 consideration and adoption of the rules governing co-ownership is the focus of
2 much democratic process in virtually every housing cooperative. The
3 commenters wrote that few cooperatives would be willing to accept the
4 existence of a differently-privileged class of Section 8-assisted members in
5 their midst.

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

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

18 HUD response. This comment, which appears to relate only to Section 8
19 rental assistance, is outside the scope of this rulemaking, which implements
20 the "homeownership option" authorized by section 8(y) of the 1937 Act. HUD
21 notes, however, that the final rule provides that the costs of purchasing a
22 cooperative unit may be included as a "homeownership expense" for purposes of
23 determining the amount of monthly homeownership assistance payment (see §
24 982.634(c)(4)).

25 D. Homeownership option: General (§ 982.625)

26 Comment: Newly constructed homes or units under construction should be
27 eligible for purchase under the homeownership option. Several commenters
28 wrote that in some areas the only affordable housing is new housing being
29 constructed by nonprofits, and that new construction provides greater
30 assurances to low-income families that major repairs will not be necessary.
31 The commenters wrote that the prohibition against new construction would make

1 it more difficult for persons with disabilities to find accessible homes.
2 Other commenters wrote that new construction normally occurs in areas of job
3 growth. The prohibition would therefore prevent families from moving to such
4 an area in search of employment opportunities.

5 HUD response. In response to these comments, HUD has revised proposed §
6 982.625, which described the "existing home" requirement. Section
7 982.628(a)(2) of this final rule provides that a home may be purchased under
8 the homeownership option if, at the time the PHA determines that the family is
9 eligible for Section 8 homeownership assistance, the home is either under
10 construction or already existing. However, before commencing homeownership
11 assistance for the family, the PHA must determine that the home satisfies all
12 of the applicable requirements described in § 982.628 (for example, the home
13 must have been inspected by a PHA inspector and by an independent inspector
14 designated by the family; and the home must meet the HUD Housing Quality
15 Standards (HQS)).

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

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

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

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

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

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

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

23 However, HUD has revised the definition of "first-time homeowner" at
24 § 982.4 to clarify the eligibility of single parents and displaced homemakers,
25 as those terms are defined in section 956 of the Cranston-Gonzalez National
26 Affordable Housing Act (codified at 42 U.S.C. 12713). Section 956 provides
27 that no displaced homemaker or single parent "may be denied eligibility under
28 any Federal program to assist first time homebuyers" because of previous
29 ownership of a home by or with a spouse. Accordingly, this final rule
30 provides that such individuals are "first-time homeowners" for purposes of the
31 homeownership option and are, therefore, eligible to receive Section 8

1 homeownership assistance.

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

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

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

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

29 E. Initial requirements (§ 982.626)

30 Comment: The rule should allow for homeownership assistance to be used
31 by a family to purchase a two- and three-family home. The commenter wrote

1 that, in certain areas, much of the affordable housing stock consists of two-
2 and three-family homes, and the rental income would help the family meet its
3 share of the homeownership expenses.

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

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

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

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

1 would be to have the PHA conduct a review of the seller before execution of
2 the purchase agreement.

3 HUD Response. PHAs are encouraged to regularly review the list of
4 individuals and entities that are debarred, suspended or subject to a limited
5 denial of participation in HUD programs. In response to this comment, the
6 final rule provides at § 982.631 that the contract of sale must contain a
7 seller certification that the seller is not debarred, suspended, or subject to
8 a limited denial of participation under 24 CFR part 24.

9 F. How to qualify for homeownership assistance (§ 982.627)

10 Comment: The relaxed regulatory requirements for the elderly and
11 persons with disabilities will limit homeownership assistance to these
12 individuals. One commenter wrote that lenders will be wary of the relaxed
13 employment/income requirements established by the proposed rule for the
14 elderly and persons with disabilities. The commenter wrote that lenders,
15 concerned for their risk in underwriting a loan without the usual level of
16 work history, will be less likely to approve home loans for elderly and
17 disabled families.

18 HUD response. HUD has not revised the rule in response to this comment.

19 The relaxed eligibility requirements for elderly and disabled families are
20 used by the PHA to determine if the family is eligible for homeownership
21 assistance. The rule does not impose relaxed or exception standards for any
22 family with respect to their ability to obtain financing from a lender.
23 Lenders will determine the creditworthiness of each borrower on a case-by-case
24 basis using their own requirements and standards.

25 G. Minimum income requirements (§ 982.627(b)).

26 Comment: The minimum income requirements should be eliminated. Several
27 commenters wrote that, since lenders will evaluate a family's resources as
28 part of their mortgage application review, HUD should rely on them to screen
29 out families who do not have sufficient resources to make payments on a
30 mortgage loan, rather than permitting PHAs to establish a minimum income
31 threshold.

1 HUD response. HUD has not adopted this suggestion. Section 8(y)
2 explicitly establishes a minimum income requirement for participation in the
3 Section 8 homeownership program.

4 Comment: HUD should establish uniform minimum income requirements.
5 Several commenters wrote that a national standard creates certainty, making it
6 possible for national, regional, or statewide entities (lenders, advocates,
7 intermediaries, nonprofits, etc.) to develop and administer activities in
8 support of the program.

9 Other commenters wrote that the final rule should restrict the PHA from
10 establishing minimum income requirements that will prevent persons on fixed
11 incomes from receiving homeownership assistance, since elderly and persons
12 with disabilities are often on low, fixed incomes. The commenters recommended
13 that any minimum income requirements established by the PHA should not be so
14 high that they exclude these individuals from homeownership assistance.

15 HUD response. HUD agrees that the regulation should establish a
16 national standard for the minimum income requirements. As suggested by
17 several of the commenters, HUD has decided to establish a national minimum
18 income requirement that is equal to 2,000 hours of yearly full-time work under
19 the Federal minimum wage. HUD believes that this standard is administratively
20 straight-forward, and addresses the statutory employment requirement without
21 arbitrarily eliminating working families that are making no more than the
22 minimum wage.

23 Comment: PHAs should be permitted to make reasonable exceptions to the
24 minimum income requirement if they determine that the applicant household has
25 a high probability of being a successful owner. One commenter wrote that the
26 minimum income requirements do not address one of the factors in mortgagor
27 credit review -- a household's total monthly fixed payment obligation. The
28 commenter wrote that a household below the minimum requirement may have an
29 exemplary credit history and no additional debt obligations. According to the
30 commenter, such a household would be a better candidate for homeownership than
31 a household with income above the minimum.

1 HUD response. HUD has not adopted this suggestion. The minimum income
 2 requirement represents the bare minimum income threshold the family must meet
 3 to be eligible for homeownership assistance, and does not automatically
 4 indicate the family would be a successful candidate for homeownership.
 5 Instead of making exceptions to the minimum income requirement for families
 6 that otherwise appear to have a high probability of being a successful
 7 homeowner, the PHA could work with the family on increasing family income
 8 through the FSS program or other self-sufficiency efforts.

9 Comment: Requiring the "head of household or spouse" to meet minimum
 10 income requirement fails to acknowledge the varied structure of some families,
 11 and has a disparate impact on single-headed households, domestic partners, and
 12 households that have related but unmarried adult members. Several commenters
 13 wrote that the minimum income requirements fail to account for the wide
 14 variety of families receiving Section 8 assistance. For example, it is
 15 possible for the head of household to have no earned income but have a
 16 domestic partner, adult child, or other adult family member that works.

17 HUD Response. The purpose of the minimum income requirement is to
 18 ensure that the family has adequate resources to meet the additional costs
 19 associated with homeownership. The proposed rule tied the minimum income to
 20 the head of household and spouse in order to ensure that those family members
 21 who actually owned the home met the income requirement, as opposed to other
 22 family members that might shortly leave the household following the purchase
 23 (thereby increasing the risk of defaults). However, HUD agrees that this type
 24 of restriction does not sufficiently take the variety of family structures
 25 into account. Therefore, the final rule provides that the adult family
 26 members who will own the home at commencement of homeownership assistance must
 27 have qualified monthly income (gross income) that is not less than the minimum
 28 income requirement, as opposed to only the head and spouse.

29 Comment: Disabled and elderly families should be exempt from minimum
 30 income requirements. One commenter wrote that although the rule permits
 31 public assistance payments to be considered in determining whether an elderly

1 or disabled family meets the minimum income requirements, disabled or elderly
2 families would still have difficulty in meeting the minimum income threshold.

3 The commenter suggested that elderly and disabled families should be exempt
4 from the minimum income requirements, because the goal of rewarding work does
5 not apply to these households.

6 HUD Response. Section 8(y) does not provide for an exemption from the
7 minimum income requirement for elderly or disabled families, other than the
8 source of income used to determine if the family meets the requirement. The
9 purpose of the minimum income requirement is to ensure that the family has
10 sufficient income available to absorb the additional expenses associated with
11 homeownership, not to ensure that the family meets the employment requirement.

12 H. Family Employment (§ 982.627(c))

13 Comment: The employment requirement should be eliminated. Several
14 commenters recommended elimination of this requirement. The commenter wrote
15 that HUD should rely on lenders to determine what is an acceptable employment
16 history, rather than establishing minimum employment requirements or
17 permitting PHAs to establish such requirements. Other commenters wrote that,
18 since a minimum income requirement already exists, the employment requirement
19 is redundant. The commenters suggested that, in the place of an employment
20 requirement, HUD require a family to show proof that it earned the minimum
21 income amount during the past year.

22 HUD response. The employment requirement is statutory and the
23 requirement is essential to the purpose of rewarding work and assisting
24 families in making the transition to economic self-sufficiency. However, the
25 final rule, in accordance with the law, provides exceptions from the
26 employment requirement for disabled and elderly families.

27 Comment: PHAs need flexibility in determining whether the family has
28 fulfilled the "continuous" employment requirement. Several commenters wrote
29 that the final rule should focus on whether prospective participants have
30 maintained a steady income, not on whether they have been continuously
31 employed. The commenters wrote that in some parts of the country there are

1 seasonal industries that result in annual full-time income being acquired
2 during only part of the year. Many persons, such as construction workers,
3 nurses, taxi drivers, waitresses and hair dressers, may have multiple
4 employers in the same year. The commenters recommended that the final rule
5 grant PHAs flexibility in interpreting the "continuous" employment
6 requirement.

7 HUD response. HUD agrees that the employment requirement should allow
8 for small breaks in service to be taken into consideration. The final rule
9 provides that the PHA has discretion to determine whether (and to what extent)
10 a brief interruption is considered permissible. The final rule also clarifies
11 that the PHA may count successive employment during the year and consider
12 self-employment in a business.

13 Comment: Requiring the "head of household or spouse" to meet employment
14 requirement fails to acknowledge the varied structure of some families.
15 Several commenters wrote that requiring the head of household or spouse to
16 meet the employment requirements will disqualify many non-traditional
17 families. In some extended families the head of household may be unemployed,
18 but there may an adult child who is employed and providing the income upon
19 which the family could qualify for financing. One commenter suggested that
20 the final rule should simply require that an adult member of the household be
21 gainfully employed.

22 HUD response. HUD agrees with the commenters and the final rule
23 provides that any of the adult family members who will own the home at
24 commencement of homeownership assistance may fulfill the employment
25 requirement.

26 Comment: The required term of employment should be lengthened. One
27 commenter suggested that HUD should impose a two year employment term. The
28 commenter recommended that the final rule should require either: (1) two years
29 employment with the same employer; or (2) two years employment in the same
30 line of work. The commenter wrote that this is the minimum required by
31 mortgage underwriters. Other commenters suggested that the employment term

1 should be at least three years. Another commenter wrote that the head of
2 household or spouse should be required to be employed for as long as the
3 family is receiving homeownership assistance, with limited periods of
4 unemployment due to circumstances beyond the control of the family taken into
5 consideration.

6 HUD response. The final rule does not extend the minimum employment
7 term. HUD believes one year of substantially continuous employment is an
8 acceptable minimum threshold and a realistic gauge of the likelihood of
9 continued employment in the future. However, the lender will apply its own
10 underwriting criteria, which may include an employment requirement that is
11 more stringent than the standard adopted by the final rule. The PHA could
12 also choose to lengthen employment time by adopting additional eligibility
13 criteria in accordance with § 982.626(b) of this final rule.

14 I. Ineligibility of family if head or spouse previously defaulted on a
15 mortgage when receiving homeownership assistance (§ 982.627(d))

16 Comment: Prohibition against mortgage defaults is unnecessarily
17 restrictive. Several commenters wrote that the requirement is unnecessarily
18 restrictive. These commenters wrote that this is a matter best left to the
19 discretion of the loan underwriter, who will consider the default in
20 determining whether to approve the mortgage.

21 Another commenter suggested that a family who defaulted on a previous
22 mortgage due to the death of a family member, or other circumstances beyond
23 the family's control, should not be prohibited from receiving future
24 homeownership assistance. The commenter suggested that the final rule should
25 permit the PHA to determine on a case-by-case basis whether the default was
26 beyond the family's control.

27 HUD Response. The prohibition on participation by a family that
28 previously defaulted on a mortgage while receiving section 8(y) assistance is
29 a statutory requirement. Accordingly, HUD has not adopted the changes
30 suggested by the commenters.

31 J. Additional PHA requirements for family search and purchase (§ 982.628).

1 Comment: Delays in provision of assistance may limit effectiveness of
2 program. One commenter wrote that the longer, more unpredictable time frame
3 between the time the PHA determines a family is eligible for homeownership
4 assistance and the time that assistance actually commences would affect lease
5 up rates and PHA financial management. The commenter wrote that this
6 unpredictability may cause PHAs to offer homeownership assistance only to
7 existing participants, rather than allowing new clients to participate.

8 HUD response. HUD agrees with the comment that permitting applicants to
9 participate in the homeownership option will present PHAs with several
10 significant challenges (such as defining a realistic search term for a first-
11 time homebuyer without creating adverse impact on utilization rates and
12 administrative fees) that do not surface if the PHA limits the option to
13 current rental participants. For this reason, HUD anticipates that most
14 participants in the Section 8 homeownership program will be families currently
15 participating in the tenant-based rental program. The time required for a
16 current participant to locate and purchase a home will have a minimal impact
17 on the PHA's lease-up rate or financial management activities since the family
18 may continue to receive rental assistance in their rental unit during the
19 search and settlement process. ~~The decision to extend the homeownership~~
20 ~~option to applicants, participants, or both applicants and participants rests~~
21 ~~with the PHA.~~

22 Comment: A family should be allowed more than two months to locate a
23 home. Several commenters wrote that finding a home can be a lengthy process
24 and requires more than two months. Although there was no consensus on the
25 amount of time that should be provided, all of the commenters advocated that
26 the final rule establish an greater length of time for finding a home.
27 Suggestions included a minimum of four months, six months, and a range of six
28 to nine months. A number of commenters wrote that due to the difficulty of
29 finding a home that is both affordable and accessible, the final rule should
30 ensure that persons with disabilities are provided with ample time to find a
31 home to purchase.

1 HUD response. Neither the April 30, 1999 proposed nor this final rule
2 place a two month limitation on the family's search for a home. Section
3 982.303 (term of voucher) is not applicable to the homeownership option (see §
4 982.641(b)). HUD has not adopted the suggestions to establish a minimum term
5 for family search and purchase. HUD believes this decision is properly left
6 to the administrative discretion of the PHA, as the housing market will vary
7 from community to community. However, in establishing such time limits, the
8 PHA should ensure that a family who has executed a sales contract is provided
9 reasonable time to close on the purchase of the home.

10 Comment: The final rule should explicitly provide that if a family is
11 unable to locate a home within the time limits, the PHA should be required to
12 issue a rental voucher or put the family at the top of the waiting list. One
13 commenter made this suggestion.

14 HUD response. HUD has not adopted this comment. HUD does not wish to
15 impose this type of requirement on PHAs.

16 Comment: The PHA should provide a letter to the lender verifying the
17 applicant's family income, payment standard assistance, and any other
18 financial help that would be offered to the family. Two commenters wrote that
19 this type of documentation would enable the family to show prospective
20 sellers, realtors, etc. that the family is in fact empowered to make the
21 acquisition of a home. The commenters also wrote that this would assist the
22 lender to pre-qualify the family accurately.

23 HUD Response. Although HUD is not requiring PHAs to provide such a
24 letter to lenders in the final rule, PHAs may opt to provide prospective
25 lenders or realtors with information concerning the family's participation in
26 the Section 8 homeownership program, the applicable payment standard, and how
27 the monthly subsidy will be calculated under the housing choice voucher
28 program. However, HUD would caution the PHA not to provide income information
29 on an individual family to any third party. The family must disclose income
30 to the lender through the mortgage application process, and the verification
31 of family income for underwriting purposes is the responsibility of the

1 lender, not the PHA.

2 K. Homeownership counseling (§ 982.629)

3 Comment: HUD should provide funding for homeownership counseling
4 services. Several commenters recommended that HUD provide additional funding
5 for homeownership counseling. One commenter suggested that HUD should make
6 the additional funds available through a demonstration program or competition.

7 Other commenters wrote that HUD should provide the necessary funding by
8 either an increase in the ongoing administrative fee or by making provisions
9 for approving release of the hard-to-house fee (currently available for
10 assisting large families to lease a unit).

11 HUD Response. HUD has not adopted these recommendations. There are no
12 additional appropriations made available for this purpose. Furthermore, PHAs
13 can partner with HUD-funded homeownership counseling agencies to provide the
14 necessary counseling. Since these agencies provide homeownership counseling
15 services at little or no charge, the cost incurred by the PHA would be
16 nominal. A list of the HUD-approved homeownership counseling agencies is
17 available from the HUD Housing Counseling Clearinghouse website
18 (<http://www.hudhcc.org/agencies/agencies.html>).

19 Comment: Charges to the family for counseling should be nominal. One
20 commenter made this recommendation.

21 HUD response. Family completion of the pre-assistance homeownership
22 counseling program is mandatory in order for homeownership assistance to
23 commence on behalf of the family. Since the PHA cannot charge a family any
24 type of fee to receive Section 8 assistance, the PHA may not charge a family a
25 fee or otherwise pass on any of the cost of the counseling to the family.

26 Comment: Paragraph (b) of this section would be more accurate if it
27 read "The PHA-required pre-assistance counseling program...." One commenter
28 wrote that the addition of the word "required" would clarify that the PHA
29 itself is not obligated to provide the counseling.

30 HUD response. HUD agrees with the commenter, and has incorporated the
31 suggested revision in the final rule.

1 Comment: The final rule should allow as much flexibility as possible to
2 PHAs in the development of counseling programs. One commenter wrote that
3 several of the mandatory counseling requirements may be inappropriate for
4 certain types of PHA homeownership programs. The commenter urged that the
5 final rule provide greater flexibility regarding the crafting of homeownership
6 counseling programs.

7 HUD response. The final rule clarifies that the PHA-required counseling
8 program should "generally" cover the topics listed in § 982.630. The final
9 rule also provides that the PHA may adapt the housing counseling topics to
10 local circumstances and the needs of individual families. Further, the final
11 rule provides that, if the PHA is utilizing a HUD-approved housing counseling
12 agency to provide the counseling for families participating in the
13 homeownership option, the PHA should ensure that its counseling program is
14 consistent with the homeownership counseling provided under HUD's Housing
15 Counseling program.

16 Comment: Counseling programs should include information on fair housing
17 and fair housing lending practices, as well as referrals to local fair housing
18 enforcement agencies. One commenter made this suggestion.

19 HUD response. HUD agrees with the commenter, and the suggested revision
20 has been incorporated in the final rule.

21 L. Home inspections and contract of sale (§ 982.630)

22 Comment: Dual inspection requirements. A number of commenters objected
23 to the proposed dual HQS/independent home inspection requirements. Several
24 commenters wrote that two inspections would be duplicative and add unnecessary
25 expense and time to the homebuying process. The commenters offered various
26 alternatives to the dual inspection requirement. Several commenters suggested
27 that only the independent inspection be required; others recommended that the
28 initial HQS inspection be retained and the requirement for third-party
29 inspection be removed. One commenter suggested that PHAs be granted the
30 discretion to establish criteria for one uniform inspection. Another
31 commenter recommended that the scope of the HQS inspection be expanded to

1 include the desired features of an independent professional home inspection.

2 Other commenters supported the dual inspection requirement contained in
3 the proposed rule. These commenters wrote that an independent home inspection
4 was useful to identify potential problems that were not immediate
5 deficiencies, but that an HQS inspection is also important to identify basic
6 health and safety issues. One commenter wrote that the HQS inspection was
7 also useful because it limited the possible financial burden on the family by
8 identifying significant HQS deficiencies and eliminating the need for the
9 family to pay for a subsequent independent inspection.

10 HUD response. After carefully considering the comments, HUD has not
11 changed the requirement that the unit will pass an initial HQS inspection
12 conducted by the PHA and also be subject to an independent professional home
13 inspection. Section 8(y) removes the requirement that the PHA conduct annual
14 HQS inspections, but does not eliminate the requirement that the unit
15 initially meet HQS before assistance payments may commence. The statute
16 specifically requires that the contract of sale provide for a pre-purchase
17 inspection by an independent professional, which is clearly separate and
18 distinct from the statutory HQS inspection.

19 The purposes of these inspections are also separate and distinct. The
20 HQS inspection determines if the current physical condition of the unit is
21 decent, safe, and sanitary, and is therefore eligible to be assisted under the
22 Section 8 program. It is the sole responsibility of the PHA to determine
23 whether a potential unit meets the HQS requirements of the program.

24 The HQS inspection is not designed to assess the life span of major
25 components, building systems, appliances and other structural components in
26 order to identify potential problems for the future, such as the need to
27 replace an aging heating system or roof in the next several years. Clearly,
28 such information is important for a potential homebuyer to take into
29 consideration. The requirement for an inspection arranged by the buyer and
30 satisfactory to the buyer is a typical contingency clause in contracts of sale
31 and is consistent with private real estate practice.

1 HUD does not believe it is advisable to combine the distinct purposes of
2 each inspection into a single inspection. Combining the inspections
3 compromises the independent standing of the professional inspector, who is
4 selected by and paid by the potential buyer, and the separate programmatic
5 role and responsibility of the PHA HQS inspector. HUD also agrees that the
6 initial HQS inspection serves to ensure the family does not enter into a
7 contract of sale or otherwise expend family resources for the independent
8 inspection for units that are ineligible for Section 8 assistance.

9 Comment: The final rule should provide PHAs the discretion to modify
10 the inspection requirements for new homes Several commenters wrote that
11 newly constructed homes often come with builder/contractor warranties and that
12 new homes have to pass a series of inspections by local authorities in order
13 to receive a final certificate of occupancy. The commenters recommended that
14 the final rule permit PHAs to establish more relaxed inspection standards for
15 newly constructed homes.

16 HUD response. HUD has not provided PHAs with the discretion to relax or
17 modify the inspection requirements for newly constructed homes. HUD does not
18 believe that the inspection requirement will prove problematic for new homes.

19 The unit must initially meet the HQS and there is no automatic guarantee
20 against poor construction or other types of problems, regardless of the date
21 of completion of a particular unit.

22 Comment: HQS inspections should be performed on a regular basis
23 throughout term of assistance. One commenter wrote that HQS inspections
24 should be required annually during the term of homeownership assistance.
25 Another commenter suggested that HQS inspections should be performed at least
26 once every two years at minimum. One commenter wrote that the PHA, or local
27 supportive service provider, should be given the option of performing annual
28 HQS inspections.

29 HUD response. The statute explicitly provides that the annual HQS
30 inspection is not required for section 8(y) units. While the final rule does
31 not require the PHA to conduct subsequent inspections of the unit, the final

rule clarifies that the additional requirements for continuation of homeownership assistance established by the PHA may include additional unit inspections while the family is receiving homeownership assistance (see § 982.633(b)(7)).

Comment: PHAs should be permitted to pay for the independent professional home inspection. Several commenters wrote that, given the expense involved in contracting with a home inspector, PHAs should be provided the option of paying for the independent home inspection.

HUD response. The independent home inspection is supposed to be independent of, not only the seller, but also the PHA. The HQS inspection, conducted prior to the time the family enters into a contract of sale and contracts for the independent inspection, and the pre-assistance counseling program should reduce the likelihood of the family having to incur the cost of the inspection for numerous units.

Comment: The independent inspector should be allowed to be an employee or contractor of the PHA. One commenter wrote that some PHAs contract with private nonprofit agencies that provide a variety of housing related services. According to the commenter, these agencies have rehabilitation programs and inspectors that are completely separate from the Section 8 program. The commenter wrote that PHAs should not lose these agencies as a resource for independent inspections.

HUD response. HUD has not adopted this recommendation. The pre-purchase inspection is supposed to be conducted by a professional independent of the PHA. The purpose of the requirement is to provide the potential buyer with an impartial third-party assessment of the physical condition of the property's systems and components. The final rule explicitly provides that the independent inspector may not be a PHA employee or contractor, or other person under control of the PHA.

M. Financing purchase of home; affordability of purchase (§ 982.631)

Comment: PHA administrative authority to establish financing requirements. Several commenters wrote that the PHA is not acting as the

1 lender, nor has an ownership interest in the property, and should not
2 determine acceptable types of financing or establish payment requirements. As
3 an alternative, one of the commenters suggested that HUD should allow PHAs to
4 define in their PHA Plans questionable financing situations (such as balloon
5 payment mortgages) that would trigger a PHA review to determine the
6 reasonableness of the financing arrangement.

7 Several other commenters wrote that variable interest rates have the
8 potential to negatively impact a first-time homebuyer's success if the
9 mortgage balloons while the family income remains stagnant. These
10 commenters urged that the final rule establish an absolute prohibition against
11 balloon payments.

12 HUD response. After carefully considering the comments submitted on
13 this issue, HUD has decided that it is appropriate to retain PHA
14 administrative discretion to establish requirements regarding the terms of the
15 financing. The PHA is in the best position to determine what is workable in
16 its local community, and what level of risk related to variable interest rate
17 mortgages and balloon payments is acceptable for the PHA's homeownership
18 program. HUD believes that the flexibility granted to PHAs by the final rule
19 will help to ensure responsible financial oversight of the homeownership
20 program and that homeowners are provided with necessary protections. In
21 addition, HUD believes that allowing the PHA to prohibit questionable types of
22 financing will increase the number of PHAs willing to offer the homeownership
23 option.

24 ~~While HUD agrees that loans with features like balloon payments are~~
25 ~~potential problems for low-income borrowers, there may be certain~~
26 ~~circumstances and localities where the use of such features is appropriate.~~

27 While HUD believes that PHAs should have the discretion to determine
28 what financing requirements are appropriate for their localities, HUD also
29 wishes to protect families participating in the Section 8 homeownership option
30 from abusive lending practices. HUD has joined with the Department of the
31 Treasury to develop recommendations on legislative, regulatory, and other

1 steps to curb predatory mortgage practices. These recommendations, which are
2 contained in a joint HUD-Treasury report, are based on information that HUD
3 and the Department of the Treasury gathered as co-chairs of the National
4 Predatory Lending Task Force, convened in April, 2000. Through public forums
5 with industry, consumers, consumer advocates, and local and state governments
6 in Washington, Atlanta, Los Angeles, New York, Baltimore, and Chicago, HUD and
7 the Department of the Treasury collected evidence on the nature and growing
8 incidence of predatory lending practices nationwide.

9 This final rule makes several changes that are designed to ensure that
10 families are protected from abusive lending practices. For example, § 982.632
11 of this final rule clarifies that PHAs may review lender qualifications and
12 the loan terms before authorizing homeownership assistance. The PHA may
13 disapprove proposed financing, refinancing or financing for improvements or
14 repairs if the PHA determines that the debt is unaffordable or the lender or
15 the loan terms do not meet PHA qualifications.

16 PHAs are encouraged to analyze each loan (including refinancing or
17 financing for improvements or repairs) before providing assistance to
18 determine whether the lender and the loan meet its qualifications. While no
19 one set of abusive practices or terms characterizes a predatory mortgage loan,
20 PHAs should be particularly careful of loans with the following features:
21 loans in which financing costs represent a high percentage of the total loan
22 amount; loans that include high credit insurance premiums; balloon payments
23 that the borrower will be unable to repay; interest rates (including variable
24 rates) significantly higher than conventional mortgages; pre-payment
25 penalties, especially penalties that extend over long terms; high ratios of
26 family debt to income; and loans based on unverified sources of income or
27 without regard to the borrower's ability to repay; excessive fees or fees
28 "packed" into the loan amount without the borrower's understanding; and "loan
29 flipping" accompanied by high fees (including prepayment penalties that strip
30 the borrower's equity with each successive refinancing).

31 HUD will revise its regulations for the Section 8 homeownership option,

1 as appropriate, to implement legislative or other changes made in response to
2 the joint HUD-Treasury report. A copy of the joint report may be obtained
3 through HUD's internet homepage at www.hud.gov.

4 ~~Section 982.632 of this final rule clarifies that a PHA may review~~
5 ~~lender qualifications and the loan terms before authorizing homeownership~~
6 ~~assistance. The PHA may disapprove proposed financing, refinancing or~~
7 ~~financing for improvements or repairs if the PHA determines that the debt is~~
8 ~~unaffordable or the lender or the loan terms do not meet PHA qualifications.~~

9 Comment: The final rule should establish uniform qualification
10 requirements for lenders. One commenter wrote that examples of this type of
11 lender or financial program qualifications might include identifying specific
12 entities (such as conventional mortgage lenders) that regularly participate in
13 the secondary market or that participate in governmental lending or mortgage
14 insurance programs; State Housing Finance Agency programs; subsidy programs
15 administered by states, counties, cities, or subdivisions; and nonprofit
16 organizations.

17 HUD response. HUD believes such a requirement is too restrictive and
18 could inappropriately limit available financing in some markets. The final
19 rule continues to allow the PHA to establish requirements concerning the
20 qualification of lenders but does not impose any for the program as a whole.

21 Comment: Final rule should not require or permit the PHA to establish
22 homebuyer downpayment requirements. Several commenters opposed any homebuyer
23 downpayment requirements under the homeownership program. One commenter wrote
24 that requiring families to make downpayments from their own resources will
25 effectively prevent families residing in expensive housing markets from ever
26 participating in the homeownership option. Another commenter wrote that
27 foreclosures are not caused by families choosing to walk away from a home
28 because they have equity invested but because they lose their income.

29 HUD response. The proposed rule did not propose to establish a minimum
30 downpayment requirement, but proposed to grant the PHA flexibility to
31 establish a requirement for a minimum homeowner equity payment from the

1 family's personal resources. The final rule continues to provide this
2 flexibility to the PHA. A PHA may determine that a minimum contribution by
3 the family for the downpayment is appropriate to demonstrate the family's
4 commitment and readiness for the responsibilities of homeownership.

5 Comment: Final rule should permit seller contributions to
6 downpayment/closing costs. According to one commenter, this policy would
7 increase housing choice for participating families.

8 HUD response. This final rule does not prohibit seller contributions to
9 the downpayment or closing costs. However, the final rule continues to
10 provide that the PHA may establish a minimum equity requirement from the
11 family's personal resources; types of financing, and qualifications of
12 lenders. The PHA's administrative policy on these subjects might impact on
13 the extent to which seller contributions would be permissible. In addition,
14 individual lenders may have underwriting criteria impacting seller
15 contributions to the downpayment or closing costs, which would be applicable
16 regardless of the PHA policy regarding seller contributions.

17 Comment: Use of FHA underwriting standards for non-FHA insured loans.
18 Several commenters supported the requirement that all loans under the Section
19 8 homeownership program meet FHA underwriting criteria. On the other hand,
20 other commenters wrote that the use of FHA underwriting standards would unduly
21 restrict the availability of properties available for purchase. These
22 commenters wrote that the use of FHA criteria would prevent families from
23 using other types of flexible mortgage financing designed to assist low-income
24 homebuyers. Some commenters also wrote that the added burden and restrictions
25 of complying with FHA requirements would deter lenders from participating in
26 the program.

27 HUD response. After considering the comments on this issue, HUD has
28 revised the rule by removing the requirement that purchases of homes financed
29 without FHA-insured mortgage assistance must, nonetheless, comply with the
30 basic mortgage insurance credit underwriting requirements for FHA-insured
31 single family mortgage loans.

1 HUD proposed this requirement to minimize the risk of default by
2 imposing a minimum underwriting standard. However, HUD agrees that imposing
3 FHA requirements on non-FHA loans would unduly restrict the availability of
4 financing vehicles and options for Section 8 homeownership families. FHA
5 underwriting requirements are in place for FHA mortgages to protect the
6 solvency of the FHA fund but may not necessarily be an appropriate standard
7 for non-FHA loans. In fact, mandating FHA underwriting standards would result
8 in eliminating desirable non-FHA financing options for families, such as
9 foundation funds or State programs for first-time homebuyers.

10 The final rule clarifies that if purchase of the home is financed with
11 FHA-insured mortgage financing, the financing is subject to FHA insurance
12 credit underwriting requirements. Otherwise, the underwriting standards of
13 the individual lender and/or financing program will apply in cases where
14 financing for purchase of the home is not FHA-insured.

15 Comment: PHA authority to disapprove proposed financing if the PHA
16 determines the debt for the purchase of the home is unaffordable. One
17 commenter recommended that the final rule should require the PHA to take a
18 family's expenses into account in determining whether to approve the financing
19 for a homeownership loan. Another commenter suggested that the final rule
20 should establish uniform standards for use by PHAs in assessing the
21 affordability of debt. The commenter wrote that a national standard will
22 provide certainty for institutions seeking to develop programs designed to
23 dovetail with the homeownership option. The commenter recommended that a
24 standard similar to that used in the HOME program or the USDA Section 502
25 Direct loan program be adopted.

26 Another commenter wrote that the PHA's right to review and disapprove
27 financing should be limited to seller financing. The commenter wrote that
28 reputable mortgage lenders have no incentive to underwrite loans that will
29 default.

30 HUD response. The final rule retains the broad PHA administrative
31 discretion to disapprove proposed financing if the PHA determines that the

1 debt for the purchase of the home is unaffordable. HUD believes that local
2 administrative flexibility is appropriate, and that the decisions as to what
3 level of debt is unaffordable or what terms of financing are appropriate are
4 best left to the PHA.

5 N. Continued assistance requirements; family obligations (§ 982.632)

6 Comment: The family should obtain PHA approval prior to entering into
7 refinancing agreements or securing additional financing on the home (whether
8 to finance repairs, consolidate debts, or for any other reason) and the family
9 should secure counseling before such action. One commenter made this
10 suggestion.

11 HUD response. HUD agrees that the PHA should have the option to require
12 prior PHA approval before the family enters into a refinancing agreement or
13 secures additional financing on the home. Accordingly, § 982.632 of the final
14 rule incorporates the suggestion made by the commenter.

15 Comment: HUD should develop contracts for use in the Section 8
16 homeownership program. One commenter wrote that a Statement of Homeowner
17 Obligations is not a contract and would probably be insufficient if the PHA
18 has to turn to the local courts. The commenter recommended that HUD develop
19 two separate contracts for use by PHAs -- one if the payments are made
20 directly to the family and another for payments made directly to the lender.

21 HUD response. The PHA is not contractually obligated to make payments
22 to the lender. The HAP payments to the lender are made on behalf of the
23 family, not the PHA. If the HAP payment were to cease, the family would still
24 be responsible for the full monthly mortgage payment due the lender.
25 Furthermore, mortgages are often sold and families may refinance. Encumbering
26 the mortgage or the lender with a mandated HUD contract may ultimately
27 discourage lender participation in the program.

28 Comment: Homebuyers should be required to demonstrate that real
29 property taxes, assessments, water taxes, etc., are current on an annual
30 basis. One commenter made this suggestion.

31 HUD response. HUD has not added evidence of payment of taxes as a

1 specific requirement for continued homeownership assistance in the final rule.

2 However, § 982.633(b)(7) permits PHAs to establish additional requirements
3 for the continuation of homeownership assistance, which could include such a
4 requirement. HUD believes that imposing a requirement of this type is best
5 left to the discretion of the individual PHA.

6 O. Maximum term of homeownership assistance (§ 982.633)

7 Comment: What is the appropriate length of time to provide
8 homeownership assistance to the family? Several commenters wrote in support
9 of the ten year limit. Other commenters urged HUD to extend the 10 year
10 limit. Many of these commenters suggested that the maximum term be extended
11 to fifteen, twenty, or thirty years, to better reflect usual mortgage terms.
12 The commenters urging an extension of the maximum 10 year period stated that
13 the shorter term would discourage lenders and the secondary mortgage market
14 from participating in the program. Several of these commenters wrote that in
15 ten years it is unlikely that the unamortized balance of a mortgage could be
16 refinanced at a monthly payment affordable to an unassisted homeowner,
17 therefore resulting in a large number of mortgage defaults. Accordingly, the
18 commenters stated that the maximum term might limit homeownership assistance
19 to higher income families able to afford the increased mortgage payments
20 following the termination of assistance. Further, low income families
21 concerned about defaulting at the end of the maximum term would be forced to
22 purchase in depressed real estate markets, such as minority and/or poverty
23 concentrated areas.

24 On the other hand, a number of commenters wrote that the ten year
25 maximum term should be reduced to three, five, or seven years. These
26 commenters stated that by providing a mortgage subsidy for ten or more years,
27 HUD would be promoting ongoing dependency on Section 8 assistance and reducing
28 the availability of limited Section 8 resources for other families.

29 A couple of commenters wrote that the final rule should establish a
30 uniform maximum term instead of permitting a PHA to establish a maximum term
31 shorter than ten years. The commenters stated that without the availability

1 of a uniform program time period, lenders and other agencies likely to provide
2 subsidy assistance would find it difficult to develop national or regional
3 programs to support the homeownership option. However, other commenters
4 recommended that PHAs should have absolute flexibility to determine the
5 maximum term of assistance based on their local housing needs.

6 HUD response. After carefully considering the comments on the maximum
7 term for a family to receive homeownership assistance, HUD has significantly
8 revised the requirement in the final rule.

9 HUD agrees that there is a need to establish a Federal standard
10 regarding the maximum time that a family may receive homeownership assistance
11 to ensure that the program is equitable for all families receiving
12 homeownership assistance. Further, a uniform Federal standard will establish
13 consistency across jurisdictional lines thus facilitating wider lender
14 participation. The final rule removes PHA discretion to establish a shorter
15 minimum term than the Federal standard.

16 HUD also believes that a time limit is appropriate for homeownership
17 assistance. The purpose of the Section 8 homeownership program goes beyond
18 simply defraying the monthly homeownership costs as opposed to rent. Rather,
19 the objective is to move an assisted-renter into homeownership in order to
20 foster responsibility and assist the family in ultimately achieving economic
21 self-sufficiency. A related statutory objective is to assist renters make the
22 transition to economic self-sufficiency. This objective is made clear from
23 the fact that section 8(y) targets homeownership assistance to first-time
24 homebuyers. The statute does not expand eligibility for scarce Section 8
25 assistance to existing homeowners.

26 The final rule provides for a mandatory term limit on homeownership
27 assistance of 15 years if the initial mortgage incurred to finance purchase of
28 the home has a term that is 20 years or longer. In all other cases, the
29 maximum term of homeownership assistance is 10 years. HUD believes that a
30 family should be able to assume the full responsibility for monthly
31 homeownership expenses at the end of such time. HUD also believes that the

1 maximum term established by this final rule is sufficient to achieve broad
2 lender participation.

3 HUD understands the concerns raised by some of the commenters regarding
4 Section 8 homeowners who, due to circumstances beyond their control, are
5 unable to assume full responsibility for the monthly homeownership expenses at
6 the end of the maximum term. HUD encourages PHAs and families to
7 realistically assess the family's economic situation a year or so before the
8 conclusion of the maximum term of the homeownership assistance. The family
9 would then be in a position to decide whether it might be in the family's best
10 interest to sell the property and re-entr to Section 8 rental assistance.

11 The final rule retains the provision that if the family receives
12 homeownership assistance for different homes or from different PHAs, the total
13 of assistance term is subject to the regulatory maximum term (15 or 10 years,
14 depending on the length of the initial mortgage to purchase the first unit
15 under the homeownership option).

16 As in the proposed rule, the final rule provides that the maximum term
17 limit does not apply to elderly or disabled families. The final rule
18 clarifies that, in the case of an elderly family, the exception is only
19 applied if the family qualifies as an elderly family at the commencement of
20 homeownership assistance. For instance, if a family is a non-elderly family
21 when homeownership assistance commences, the family is still subject to the
22 term limit on assistance even if the family subsequently meets the definition
23 of an elderly family during the term. In the case of a disabled family, the
24 exception applies if at any time during receipt of homeownership assistance
25 the family qualifies as a disabled family.

26 If, during the course of homeownership assistance, the family ceases to
27 qualify as a disabled or elderly family, the maximum term becomes applicable
28 from the date homeownership assistance commenced. However, such a family must
29 be provided at least 6 months of homeownership assistance after the maximum
30 term becomes applicable (provided the family is otherwise eligible to receive
31 homeownership assistance in accordance with this part).

1 Comment: Does the maximum term requirement mean that no person in the
2 family may have received more than ten years assistance? One commenter asked
3 whether the daughter of a head of household who has resided in a home
4 purchased under the homeownership option for ten years would be prohibited
5 from applying for assistance to purchase her own home. The commenter
6 recommended that the final rule clarify that the maximum term applies only to
7 those family members who obtained an ownership interest through the program.

8 HUD response. The final rule clarifies that the time limit applies to
9 any member of the household who has an ownership interest in the unit during
10 any time that homeownership payments are made, or is the spouse of any member
11 of the household who has an ownership interest in the unit at the time
12 homeownership payments are made.

13 P. Amount and distribution of monthly homeownership assistance payment
14 (\$ 982.634)

15 Comment: Families should be permitted to receive homeownership
16 assistance for the initial 3 years of the mortgage term, even if HAP
17 assistance is reduced to zero as a result of the annual examination of the
18 family's income. According to the commenter, this recommendation would
19 provide a safety net for mortgage lenders and would be consistent with current
20 underwriting requirements, which require payments like child support to be
21 available for a minimum of 36 months.

22 HUD response. The length of time a family will remain eligible for a
23 subsidy in the homeownership program is the same as in the rental program.
24 During this time, the family has a subsidy slot reserved, thereby denying use
25 of the assistance by another deserving family. In light of the severe needs
26 for housing assistance and the length of time applicants must already wait to
27 receive assistance, HUD has not revised the rule to increase the length of
28 time the subsidy slot is reserved for a family who has a relatively high
29 income and no longer qualifies for a subsidy.

30 Comment: The final rule should provide that a stable bedroom-size
31 assistance level will be provided to the family throughout the life of the

mortgage. Three commenters worried that as children leave home Section 8 assistance levels would be reduced, therefore jeopardizing the ability of a family to maintain its mortgage payments. The commenters wrote that such fluctuating assistance levels would discourage lenders from participating in the program.

HUD response. HUD does not need to revise the proposed rule to address this concern. The final rule retains the provision that protects the homeowner from decreases in the normally applicable payment standard. The payment standard for a family receiving homeownership assistance is the greater of the payment standard at the commencement of homeownership assistance for occupancy of the home and the payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home. This policy minimizes the risk of default due to decreases in the payment standard or changes in family composition.

Comment: Should the family or the lender receive the HAP payments?
Several commenters suggested that HAP payments should only be made directly to the lender and never to the family. One of the commenters wrote that this would increase the efficiency of program administration. Other commenters were concerned that a family might inappropriately use the funds and potentially jeopardize the mortgage. One of the commenters also suggested that shelter costs (such as debt service, property taxes, insurance and reserve for replacement) be built directly into the mortgage payment.

Several other commenters wrote that the payments should be made directly to the family and not the lender. The commenters wrote that it would be an administrative nightmare for lenders to be required to accept separate payments from the homeowner (for the family's portion) and the PHA. The commenters recommended that the assistance payment should be made by the PHA as a direct automatic deposit into the family's bank account with provisions for automatic withdrawal of the mortgage amount by the lender.

HUD comment. This final rule continues to provide that the PHA may make

1 the homeownership assistance payment either directly to the family or to a
2 lender on behalf of the family. The PHA may determine it is necessary to make
3 housing assistance payments directly to the family in order to secure lender
4 participation, thereby avoiding the possibility that both the PHA and the
5 family will be sending checks to the lender for the mortgage payment. On the
6 other hand, some lenders may indicate their participation is contingent on
7 receiving the payment directly from the PHA.

8 The final rule clarifies that if the PHA decides to make the
9 homeownership assistance payment directly to the lender, and the assistance
10 payment exceeds the amount due to the lender, the PHA must pay the excess
11 amount directly to the family.

12 Comment: To prevent loss of home due to unpaid taxes, the final rule
13 should require that the mortgage payment include taxes. One commenter made
14 this suggestion.

15 HUD response. This is a matter that is more appropriately left to
16 negotiation between the lender and the family, subject to any local or state
17 laws.

18 Comment: PHAs should be permitted to set a separate payment standard
19 for the homeownership program. Several commenters wrote that PHAs should have
20 the latitude to set a separate payment standard for the homeownership option.
21 For example, a payment standard of 95% of the Fair Market Rent (FMR) might
22 work for the rental market, but for the for-sale market a payment standard of
23 105% might be more appropriate. Another commenter wrote that, if the unit
24 selected by the participating family is new, the PHA should have the latitude
25 to adjust the payment standard to account for the superiority of the housing
26 unit.

27 HUD response. HUD has not made the recommended changes. The subsidy
28 level for a homeowner should not be higher than for a renter under the tenant-
29 based program. Fewer families would be assisted if HUD provided a higher
30 subsidy to homeowners. Also, it would not be equitable to provide larger
31 subsidies for families who are more likely (on average) to have higher incomes

1 than their counterparts receiving rental assistance.

2 Comment: What do "monthly homeownership expenses" include? Two
3 commenters requested clarification regarding the items included in "monthly
4 homeownership expenses."

5 HUD response. The final rule lists the items that comprise the monthly
6 homeownership expenses at § 982.635(c).

7 Comment: Homeownership expenses should not include maintenance expenses
8 nor major repairs and replacements. One commenter wrote that these are
9 expenses that come with the risk of homeownership. The commenter wrote that
10 families participating in the program should have the means to maintain their
11 home and protect the investment without subsidy.

12 HUD response. HUD has not adopted this comment. The costs of
13 maintaining and repairing a home are significant expenses associated with
14 homeownership. HUD does not believe it is inappropriate to consider these
15 costs in determining the monthly homeownership expense for a family.
16 Furthermore, in any case where the family's monthly homeownership expenses
17 exceed the applicable payment standard, the maximum subsidy that may be paid
18 on behalf of a family is capped by the applicable payment standard.
19 Reimbursement for such expenses is therefore limited by the voucher subsidy
20 formula.

21 Comment: In addition to the allowance for major home repair and
22 replacements, there should also be consideration for the cost of modifications
23 to make a home accessible to owners with disabilities. Several commenters
24 wrote in support of this change to the proposed rule.

25 HUD response. The final rule clarifies that where a member of the
26 family is a person with disabilities, mortgage debt incurred to finance costs
27 for major repairs, replacements or improvements for the home may include debt
28 incurred by the family to finance costs needed to make the home accessible for
29 the disabled person, if the PHA determines the allowance is needed as a
30 reasonable accommodation.

31 Comment: Other items should be considered in determining the

1 homeownership expenses. Several commenters suggested the consideration of
2 various items in the determination of homeownership expenses, including water
3 and sewer fees; condominium fees; and homeowner association fees.

4 HUD response. Water and sewer fees were already covered in the proposed
5 rule under the PHA utility allowance for the home. The final rule has been
6 amended to provide that if the home is a cooperative or condominium unit,
7 homeownership expenses may also include cooperative or condominium operating
8 charges or maintenance fees, or charges assessed by the condominium or
9 cooperative homeowner association.

10 Comment: HUD should develop a uniform rule for allowances of
11 homeownership expenses. The proposed rule would allow PHAs to adopt policies
12 for determining the amount of homeownership expenses in determining the
13 family's Section 8 subsidy amount. Several commenters stated that giving
14 discretion to PHAs to exclude any of these amounts as expenses would create
15 great inequities across jurisdiction lines. The commenters suggested that HUD
16 adopt a uniform rule regarding homeownership expenses. One of the commenters
17 recommended that all of the listed items be considered homeownership expenses.

18 HUD response. The proposed rule and the final rule do not provide the
19 PHA with the discretion to exclude any of the listed homeownership expenses
20 or to add any additional items. The PHA is responsible for determining the
21 appropriate allowance amount provided for maintenance expenses; major repairs
22 and replacements; and utilities (which is the same utility allowance amount
23 that applies to the voucher program as a whole). HUD believes it is
24 appropriate for the PHA to determine the allowance amounts provided for the
25 homeownership expenses, since a realistic projection of these average costs
26 will vary from jurisdiction to jurisdiction.

27 Q. Portability (§ 982.635)

28 Comment: Applicability of portability to the homeownership program.
29 Several commenters suggested that homeownership assistance should be freely
30 portable. The commenters wrote that restricting portability would prohibit a
31 family living in a center city from pursuing job opportunities in suburban

1 areas where the homeownership option is not provided.

2 One commenter suggested that if a person with a disability finds a home
3 outside the jurisdiction of the initial PHA, the initial PHA should be
4 permitted to continue to administer the program where the receiving PHA will
5 not provide homeownership assistance. The commenter wrote that the final rule
6 could also require the receiving PHA to provide homeownership assistance to
7 the person with the disability.

8 Several other commenters recommended that portability of assistance
9 under the Section 8 homeownership program between PHA jurisdictions should be
10 prohibited. One commenter wrote that Section 8 homeownership funding is
11 provided by HUD to assist local needs and should not be transferable to
12 another jurisdiction that has chosen not to provide such assistance.

13 HUD response. As noted above, HUD has clarified the portability
14 procedures of the proposed rule, which provide that the family may qualify to
15 move outside the initial PHA jurisdiction with continued assistance under the
16 voucher program. In general, the receiving PHA is not required to permit
17 families that move into the PHA's jurisdiction to receive any special housing
18 type (including homeownership assistance), regardless of whether the family
19 was receiving such assistance at the initial PHA. While the family
20 participating in the Housing Choice Voucher program has the portability right
21 to move anywhere in the country where a PHA administering tenant-based
22 assistance has jurisdiction, Section 8(y) also provides the PHA with the sole
23 discretion to determine whether to make homeownership assistance available. A
24 family under the homeownership option retains the portability rights of the
25 Section 8 voucher, but may only continue to receive homeownership assistance
26 if the receiving PHA runs a homeownership program and is accepting additional
27 homeownership families.

28 Comment: PHAs should be authorized to enter into homeownership
29 transactions outside their normal service areas, provided no other PHA runs a
30 homeownership program in that area. The commenter wrote that this policy
31 would follow the principle of promoting maximum portability wherever the PHA

1 is willing to administer the program.

2 HUD response. HUD has not adopted this comment. The PHA area of
3 operation is determined by state law, and the language of Section 8(y) does
4 not provide a statutory basis for overriding state law with respect to PHA
5 administration of the homeownership option.

6 R. Move with continued tenant-based assistance (§ 982.636)

7 Comment: A family should not be permitted to use the homeownership
8 option more than once. One commenter questioned whether the policy permitting
9 a family to purchase multiple units with voucher assistance was a prudent use
10 of scarce housing subsidy dollars.

11 HUD response. Both the proposed and final rules permit the family to
12 purchase one or more subsequent homes with continued Section 8 assistance,
13 provided that the head of household or spouse has not defaulted on a mortgage
14 securing debt incurred to purchase the home (see §§ 982.627(e) and 982.637 of
15 this final rule). HUD believes it is appropriate to permit family mobility in
16 the homeownership program. Families may need to move for a number of
17 compelling reasons such as safer neighborhoods, better schools, because more
18 or less space is needed, or to be closer to a job.

19 The final rule provides that the PHA may not commence homeownership
20 assistance for occupancy of the new unit so long as any family member owns any
21 title or other interest in the prior home. As noted earlier, the final rule
22 provides that the family cannot be assisted if they own another residential
23 property. HUD agrees that it is appropriate to limit homeownership assistance
24 only to families that do not own other residential property. The purpose of
25 the program is to help families meet their immediate housing needs and limited
26 assistance funds should not be provided to families who currently own another
27 home, regardless of whether the family chooses not to make that property their
28 primary residence.

29 Comment: The final rule should provide for the recapture of
30 homeownership assistance upon the sale or transfer of the home. Several
31 commenters made this suggestion. There was no consensus among these

commenters as to the extent of the recapture. Two of the commenters suggested that recaptures should only apply to half of the homeownership assistance payments made to or on behalf of the family. One of these commenters also suggested that the PHA should use the recaptured proceeds to assist other Section 8 families. Another commenter wrote that any recapture provision should be designed to limit the amount of equity that a participant may realize through the sale of a home under the Section 8 homeownership program.

HUD response. HUD agrees with the commenters that it is appropriate for HUD to recapture homeownership assistance upon the sale or refinancing of the home. Further, HUD agrees with the commenters that the recaptured assistance should be used to assist additional housing choice voucher assistance families. HUD recognizes that the possibility of accumulating equity in the property and the realization of profit upon sale is an important facet of homeownership. However, HUD believes these benefits can be realized even if a portion of the assistance payments made on behalf of the family are retained by the PHA out of the net sales proceeds of the property in order to further assist other needy families.

The final rule establishes a new § 982.640 that provides for such recaptures. PHAs shall recapture a percentage of the homeownership assistance defined in the regulations upon the sale or refinancing of the home. Sales proceeds that are used by the family to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a family may refinance to take advantage of lower interest rates, or better mortgage terms, without any recapture penalty. Only those proceeds realized upon refinancing that are retained by the family (for example during a "cash-out" of the refinanced debt) are subject to the new recapture provision.

New § 982.640 requires that, upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

The homeownership assistance subject to recapture shall automatically be reduced over a 10 year period, beginning one year from the purchase date, in annual increments of 10 percent. For example, if the family sells the home during the first year after purchase, the PHA will recapture 100% of the homeownership assistance provided to the family. If the family sells one year (but less than two years) after purchase, the PHA will recapture 90% of the homeownership assistance, etc. At the end of the 10 year period, the amount homeownership assistance subject to recapture will be zero.

Comment: HUD should clarify how to treat a rollover sale by which the family sells one unit to purchase another. The commenter questioned if the profit from the sale of the first property should be counted as income (for purposes of determining the total tenant payment) if the family purchased or rented another unit with Section 8 assistance.

HUD response. In calculating the family income, the treatment of income realized by the family as a result of the sale of a home purchased with assistance under the homeownership program is no different than treatment of net income from real property under 24 CFR part 5. However, in accordance with § 982.640 of this final rule, the PHA may recapture a percentage of the homeownership assistance provided to family upon the sale or refinancing of the home (see the discussion of the preceding comment). Any profit remaining from the sale or refinancing after the recapture is "income", and may reduce the amount of future subsidy for the family.

Comment: If a family participating in the homeownership program decides to "switch back" to rental assistance, must the family first sell its home before receiving rental assistance?

HUD response. Yes, the family must sell its home before the family can receive continued Section 8 rental or homeownership assistance in another unit. The final rule makes this clarification.

Comment: What ramifications should a family default have on continued participation in the rental program? Several commenters suggested that a family that defaults on its mortgage should not be allowed to receive Section

1 8 rental assistance. The commenters recommended that the family should be
2 placed on the waiting list. However, there was no consensus among these
3 commenters regarding where on the waiting list the family should be placed.
4 For example, one commenter wrote that the family should not be penalized
5 through placement at the end of the waiting list. Another commenter, however,
6 recommended that a defaulting family should be placed at the bottom of the
7 Section 8 waiting list.

8 Two commenters wrote that a family that defaults should be required to
9 re-apply for Section 8 assistance (rather than being placed back on the
10 waiting list). One of the commenters believed that it would be unfair to
11 other families to place the defaulting family on the waiting list (even at the
12 bottom of the list) since in many jurisdictions Section 8 waiting lists are
13 closed for an extended periods.

14 Several commenters recommended that the PHA should have the flexibility
15 to develop its own guidelines regarding the provision of rental assistance
16 after a default or to handle such matters on a case-by-case basis. The
17 commenters wrote that there may be circumstances beyond the recipient's
18 control (such as death, divorce, disability, or job lay-off) that result in a
19 default. The commenters wrote that a recipient should not be penalized in
20 these instances.

21 HUD response. The proposed and final rule both provide that the PHA may
22 terminate the family's participation in the voucher program if the family
23 fails to comply with the terms of the mortgage (for instance, if the family
24 defaults). Like other grounds for denial or termination of voucher
25 assistance, the decision whether to deny the family's continued participation
26 in the voucher program or to permit the family to automatically be placed back
27 on the waiting list rests with the PHA.

28 The final rule also retains the statutory provision that if the family
29 defaults on an FHA-insured mortgage, the PHA must terminate the Section 8
30 assistance and may not issue the family a rental voucher unless the family:
31 (1) moves from the unit within the specified time period established or

1 approved by HUD; and (2) conveys the title to the home, as required by HUD, to
2 HUD or HUD's designee. Even if the family complies with these requirements,
3 the PHA may still deny the family continued participation in the rental
4 voucher program, since the family did not comply with the family obligations
5 under § 982.633.

6 The final rule continues to leave the decision on the ramifications of
7 the termination of homeownership assistance because of a default with the PHA.

8 The PHA may allow the family to move and receive rental assistance (except in
9 cases where the family defaulted on an FHA-insured mortgage and has not
10 complied with HUD requirements for conveyance and possession of the property).

11 The PHA may also choose, consistent with the PHA policy in the PHA
12 administrative plan, to require the family to reapply for rental assistance.
13 The PHA may place the family at the bottom of the list, at the top of the
14 list, or wherever the family would normally fall based on PHA preferences.
15 The PHA may also prohibit the family from re-applying for assistance for a
16 certain period of time. HUD notes that the family may request an informal
17 hearing if a current participant that has defaulted on a mortgage for a
18 Section 8 homeownership unit is denied a rental voucher.

19 Comment: The incentives provided for rapid possession and title
20 conveyance for homes with FHA mortgage defaults should be extended to all
21 lenders including secondary market agencies. Two commenters made this
22 suggestion.

23 HUD response. As noted above, the PHA must deny the family continued
24 assistance if the family defaults on an FHA-insured mortgage and does not
25 comply with HUD requirements. HUD has not extended the mandatory termination
26 provision to a family who defaults on a non-FHA mortgage.

27 Section 8(y) provides for the mandatory termination of a family that
28 does not comply with HUD requirements to convey title and vacate the property
29 because the Federal government has a vested interest in protecting the FHA
30 insurance fund. HUD does not believe that it is appropriate to extend this
31 mandatory termination policy in the case of non-FHA mortgages. There may be

1 circumstances where the terms of the mortgage or the conditions for rapid
2 possession and title conveyance to the lender are not reasonable. The PHA
3 should have the discretion to decide how to address these situations.

4 Comment: The final rule should require lenders to provide a copy to the
5 PHA of any default notice at the same time such notice is sent to the
6 borrower. One commenter made this suggestion.

7 HUD response. HUD has not revised the rule to incorporate this
8 suggestion. HUD believes the recommended change could negatively impact
9 lender participation and the sale of mortgages on the secondary market.
10 Section 982.633(b)(6) of the final rule retains the requirement that the
11 family must notify the PHA if the family defaults on a mortgage securing any
12 debt incurred to purchase the home.

13 S. Administrative fees (\$ 982.637)

14 Comment: Additional HUD funding is needed for implementation of new
15 program. One commenter identified various requirements of the homeownership
16 option that will require staff time and new staff expertise to carry out. The
17 commenter suggested that HUD should compensate PHAs on a performance basis and
18 provide some preliminary funding to set up the program. Another commenter
19 wrote that HUD should provide a one time incentive of \$5,000 for each
20 homebuyer family as an incentive for PHAs to participate.

21 HUD response. The final rule has not adopted these suggestions.
22 Section 8(y) is intended to provide PHAs with added flexibility in serving the
23 housing needs of their local communities within the existing framework and
24 funding constraints of the Section 8 Housing Choice Voucher program. HUD does
25 not have any additional or separate funding to increase administrative fees
26 for PHAs that choose to exercise the homeownership option.

27 It is true that the PHA has some additional administrative duties for
28 homeownership families. However, there is a corresponding reduction in the
29 administrative responsibilities that the PHA must perform for a family
30 receiving rental assistance over the duration of the family's participation in
31 the program. For example, the PHA is not required to determine rent

1 reasonableness or conduct annual HQS inspections under the homeownership
2 option.

3 Comment: HUD should consider allowing the PHA to impose a one-time fee
4 on families participating in the program to offset additional PHA expenses,
5 such as marketing, developing program materials, and coordinating activities
6 with homebuyer counselors. One commenter made this suggestion.

7 HUD response. HUD has not adopted this suggestion. PHAs may not charge
8 families fees to participate in the homeownership program or for the normal
9 program responsibilities to be performed by the PHA. Although there are
10 additional PHA upfront responsibilities associated with a family purchasing a
11 home, the time necessary to perform the PHA's ongoing responsibilities will
12 decrease since rent reasonableness and annual HQS inspections are not required
13 in the homeownership program.

15 **VII. Performance-Based Standards for the Section 8 Homeownership Option**

16 HUD intends to develop performance-based standards for the Section 8
17 homeownership option. HUD would use these standards to monitor PHA program
18 performance in administering their Section 8 homeownership programs, and to
19 determine whether HUD intervention is appropriate due to excessive mortgage
20 default rates.

22 **VIII. Findings and Certifications**

23 Paperwork Reduction Act

24 The homeownership option is a special housing type under 24 CFR part
25 982, subpart M, of the unified rule for the Section 8 tenant-based voucher and
26 certificate program. The information collection requirements of the Section 8
27 rental certificate and voucher programs approved by the Office of Management
28 and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-
29 3520) are not increased by the implementation of this new special housing
30 type. While the rule substitutes several variations to existing requirements
31 under the normal Section 8 tenant-based program, the homeownership option does

1 not increase the total reporting and recordkeeping burden resulting from the
2 collection of information for the Section 8 certificate and voucher programs.

3 The following provisions of this final rule contain information collections:
4 §§ 982.305, 982.629, 982.631, 982.633, and 982.638.

5 The OMB approval number for the Section 8 tenant-based assistance
6 program is 2577-0169. An agency may not conduct or sponsor, and a person is
7 not required to respond to, a collection of information unless the collection
8 displays a valid control number.

9 Environmental Impact

10 A Finding of No Significant Impact (FONSI) with respect to the
11 environment was made in accordance with HUD regulations in 24 CFR part 50 that
12 implement section 102(2)(C) of the National Environmental Policy Act of 1969
13 (42 U.S.C. 4223) at the proposed rule. That FONSI remains applicable to
14 this final rule and is available for public inspection between 7:30 a.m. and
15 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General
16 Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh
17 Street, SW, Washington, DC.

18 Unfunded Mandates Reform Act

19 Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-
20 1538) establishes requirements for Federal agencies to assess the effects of
21 their regulatory actions on State, local, and tribal governments and the
22 private sector. This final rule does not impose any Federal mandates on any
23 State, local, or tribal governments or the private sector within the meaning
24 of Unfunded Mandates Reform Act of 1995.

25 Executive Order 12866

26 The Office of Management and Budget (OMB) reviewed this final rule under
27 executive Order 12866, Regulatory Planning and Review. OMB determined that
28 this final rule is a "significant regulatory action," as defined in section
29 3(f) of the Order (although not economically significant, as provided in
30 section 3(f)(1) of the Order). Any changes made to the final rule subsequent
31 to its submission to OMB are identified in the docket file, which is available

1 for public inspection in the office of the Department's Rules Docket Clerk,
2 Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

3 Impact on Small Entities

4 The Secretary, in accordance with the Regulatory Flexibility Act (5
5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so
6 doing certifies that this rule will not have a significant economic impact on
7 a substantial number of small entities. The reasons for HUD's determination
8 are as follows:

9 (1) A Substantial Number of Small Entities Will Not be Affected. The
10 final rule is exclusively concerned with public housing agencies that
11 administer tenant-based housing assistance under section 8 of the United
12 States Housing Act of 1937. Specifically, the final rule will permit a PHA to
13 provide Section 8 tenant-based assistance to an eligible family that purchases
14 a dwelling unit that will be occupied by the family. Under the definition of
15 "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions
16 of the RFA are applicable only to those few PHAs that are part of a political
17 jurisdiction with a population of under 50,000 persons. The number of
18 entities potentially affected by this rule is therefore not substantial.

19 (2) No Significant Economic Impact. The final rule will not change the
20 amount of funding available under the Section 8 voucher program. Accordingly,
21 the economic impact of this rule will not be significant, and it will not
22 affect a substantial number of small entities.

23 Executive Order 13132, Federalism

24 Executive Order 13132 (entitled "Federalism") prohibits an agency from
25 publishing any rule that has federalism implications if the rule either
26 imposes substantial direct compliance costs on State and local governments and
27 is not required by statute, or the rule preempts State law, unless the agency
28 meets the consultation and funding requirements of section 6 of the Executive
29 Order. This final rule is exclusively concerned with the establishment of an
30 alternative use of Section 8 rental voucher assistance. Specifically, the
31 rule authorizes a PHA to provide tenant-based assistance for an eligible

family that purchases a dwelling unit that will be occupied by the family.
 This final rule does not have federalism implications and does not impose
 substantial direct compliance costs on State and local governments or preempt
 State law within the meaning of the Executive Order.

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance number for the program affected by
 this final rule is 14.855.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug
 traffic control, Grant programs--housing and community development, Grant
 programs--Indians, Individuals with disabilities, Loan programs--housing and
 community development, Low and moderate income housing, Mortgage insurance,
 Pets, Public housing, Rent subsidies, Reporting and recordkeeping
 requirements.

~~24 CFR Part 903~~

~~Administrative practice and procedure, Public housing, Reporting and
 recordkeeping requirements~~

24 CFR Part 982

Grant programs--housing and community development, Housing, Rent
 subsidies, Reporting and recordkeeping requirements.

For the reasons described in the preamble, HUD amends 24 CFR parts 5,
~~903~~, and 982 as follows:

PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

AUTHORITY: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.603(d), revise the definition of "net family assets" by adding new paragraph (4) to read as follows:

§ 5.603 Definitions.

* * * *

(d) * *

Net family assets. * *

(4) For purposes of determining annual income under § 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

* * * *

~~PART 903 -- PUBLIC HOUSING AGENCY PLANS~~

~~3. The authority citation for part 903 continues to read as follows:~~

~~AUTHORITY: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).~~

~~4. Amend § 903.7 by adding a sentence at the end of paragraph (k) to read as follows:~~

~~§ 903.7 What information must a PHA provide in the annual plan?~~

~~* * * *~~

~~(k) * * * In the case of a section 8(y) homeownership program, the PHA must also demonstrate that it has the capacity, or will acquire the capacity, to properly evaluate lender qualifications, loan terms, and other financing aspects associated with section 8(y) homeownership assistance.~~

~~* * * *~~

PART 982 -- SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

3. The authority citation for 24 CFR part 982 continues to read as follows:

AUTHORITY: 42 U.S.C. 1437f and 1535(d).

4. Amend § 982.4 as follows:

a. In paragraph (a)(4), revise the phrase "and 'utility reimbursement'" to read "'utility reimbursement' and 'waiver assistance'";

b. In paragraph (b), revise the definitions of "Cooperative," and "Special housing types";

c. In paragraph (b), remove the definition of "Mutual housing"; and

d. In paragraph (b), add the definitions of "Cooperative member," "Family," "First-time homeowner," "Home," "Homeowner," "Homeownership assistance," "Homeownership expenses," "Homeownership option," "Interest in the home," "Membership shares," and "Statement of homeowner obligations" in alphabetical order.

§ 982.4 Definitions.

(b) *

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member. A family of which one or more members owns membership shares in a cooperative.

Family. A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program. See discussion of family composition at § 982.201(c).

First-time homeowner. In the homeownership option: A family of which no member owned any present ownership interest in a residence of any family member during the three years before commencement of homeownership assistance for the family. The term "first-time homeowner" includes a single parent or displaced homemaker (as those terms are defined in 12 U.S.C. 12713) who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse. "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

* * * * *

Home. In the homeownership option: A dwelling unit for which the PHA pays homeownership assistance.

Homeowner. In the homeownership option: A family of which one or more members owns title to the home.

Homeownership assistance. In the homeownership option: Monthly homeownership assistance payments by the PHA. Homeownership assistance payment may be paid to the family, or to a mortgage lender on behalf of the family.

Homeownership expenses. In the homeownership option: A family's allowable monthly expenses for the home, as determined by the PHA in accordance with HUD requirements (see § 982.634).

Homeownership option. Assistance for a homeowner or cooperative member under § 982.625 to § 982.638. A special housing type.

* * * * *

Interest in the home. In the homeownership option:

(1) In the case of assistance for a homeowner, "interest in the home" includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.

(2) In the case of assistance for a cooperative member, "interest in

the home" includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or any other present interest in the home.

* * * * *

Membership shares. In the homeownership option: shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular apartment in the cooperative, and the right to participate in management of the housing.

* * * * *

Special housing types. See subpart M of this part 982. Subpart M of this part states the special regulatory requirements for: SRO housing, congregate housing, group home, shared housing, manufactured home (including manufactured home space rental), cooperative housing (rental assistance for cooperative member) and homeownership option (homeownership assistance for cooperative member or first-time homeowner).

Statement of homeowner obligations. In the homeownership option: The family's agreement to comply with program obligations.

* * * * *

5. Add § 982.305(b)(4) to read as follows:

§ 982.305 PHA approval to lease a unit.

* * * * *

(b) * * *

(4) In the case of a unit subject to a lease-purchase agreement, the PHA must provide written notice to the family of the environmental requirements that must be met before commencing homeownership assistance for the family (see § 982.626(e)).

* * * * *

6. Add § 982.317 to read as follows:

§ 982.317 Lease-purchase agreements.

(a) A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a downpayment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

(b) In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with § 982.503, any homeownership premium paid by the family to the owner must be excluded when the PHA determines rent reasonableness.

7. Revise 982.352(a)(6) to read as follows:

§ 982.352 Eligible housing.

(a) * * *

(6) A unit occupied by its owner or by a person with any interest in the unit.

* * * * *

Subpart M--Special Housing Types

8. Amend § 982.601 as follows:

a. Revise paragraphs (a), (b)(1), and (b)(2);

b. Remove paragraph (d);

c. Redesignate paragraph (c) as paragraph (d);

d. Remove the first sentence of newly designated paragraph (d); and

e. Add new paragraphs (c) and (e) as set forth below.

§ 982.601 Overview.

(a) Special housing types. This subpart describes program requirements for special housing types. The following are the special housing types:

(1) Single room occupancy (SRO) housing;

(2) Congregate housing;

(3) Group home;

(4) Shared housing;

(5) Manufactured home;

(6) Cooperative housing (excluding families that are not cooperative members); and

(7) Homeownership option.

(b) PHA choice to offer special housing type. (1) The PHA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home when the family owns the home and leases the manufactured home space, cooperative housing or homeownership option.

(2) In general, the PHA is not required to permit families (including families that move into the PHA program under portability procedures) to use any of these special housing types, and may limit the number of families using special housing types.

* * * * *

(c) Program funding for special housing types. (1) HUD does not provide any additional or designated funding for special housing types, or for a specific special housing type (e.g., the homeownership option). Assistance for special housing types is paid from program funding available for the PHA's tenant-based program under the consolidated annual contributions contract.

(2) The PHA may not set aside program funding or program slots for special housing types or for a specific special housing type.

(d) Applicability of requirements. (1) Except as modified by this subpart M, the requirements of other subparts of this part 982 apply to the special housing types.

(2) Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

(3) Housing must meet the requirements of this subpart M for a single special housing type specified by the family. Such housing is not subject to requirements for other special housing types. A single unit cannot be designated as more than one special housing type.

* * * * *

9. Amend § 982.619 as follows:

a. Revise paragraph (a);

b. Redesignate paragraph (1) 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 § 982.639 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,

1 regardless of whether the family or the cooperative is responsible for such
2 breach of the HQS. PHA remedies for breach of the HQS include recovery of
3 overpayments, abatement or other reduction of housing assistance payments,
4 termination of housing assistance payments and termination of the HAP
5 contract.

6 (2) The PHA may not make any housing assistance payments if the
7 contract unit does not meet the HQS, unless any defect is corrected within the
8 period specified by the PHA and the PHA verifies the correction. If a defect
9 is life-threatening, the defect must be corrected within no more than 24
10 hours. For other defects, the defect must be corrected within the period
11 specified by the PHA.

12 (3) The family is responsible for a breach of the HQS that is caused by
13 any of the following:

14 (i) The family fails to perform any maintenance for which the family is
15 responsible in accordance with the terms of the cooperative occupancy
16 agreement between the cooperative member and the cooperative;

17 (ii) The family fails to pay for any utilities that the cooperative is
18 not required to pay for, but which are to be paid by the cooperative member;

19 (iii) The family fails to provide and maintain any appliances that the
20 cooperative is not required to provide, but which are to be provided by the
21 cooperative member; or

22 (iv) Any member of the household or guest damages the dwelling unit or
23 premises (damages beyond ordinary wear and tear).

24 (4) If the family has caused a breach of the HQS for which the family
25 is responsible, the PHA must take prompt and vigorous action to enforce such
26 family obligations. The PHA may terminate assistance for violation of family
27 obligations in accordance with § 982.552.

28 (5) Section 982.404 does not apply to assistance for cooperative
29 housing under this section.

30 * * * * *

31

10. Add §§ 982.625 through 982.641 under a new undesignated heading "Homeownership Option" to read as follows:

Homeownership Option

982.625 Homeownership option: General.
 982.626 Homeownership option: Annual 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

1 the family's personal resources;

2 (2) The PHA requires that financing for purchase of a home under its
3 Section 8 homeownership program:

4 (i) Be provided, insured, or guaranteed by the state or Federal
5 government;

6 (ii) Comply with secondary mortgage market underwriting requirements;
7 or

8 (iii) Comply with generally accepted private sector underwriting
9 standards; or

10 (3) The PHA otherwise demonstrates in its Annual Plan that it has the
11 capacity, or will acquire the capacity, to successfully operate a Section 8
12 homeownership program.

13 ~~_____ (d) The PHA must demonstrate in its PHA Annual Plan that it has the~~
14 ~~capacity, or will acquire the capacity, to properly evaluate lender~~
15 ~~qualifications, loan terms, and other financing aspects associated with the~~
16 ~~homeownership option.~~

17
18 § 982.626 Homeownership option: Initial requirements.

19 (a) List of initial requirements. Before commencing homeownership
20 assistance for a family, the PHA must determine that all of the following
21 initial requirements have been satisfied:

22 (1) The family is qualified to receive homeownership assistance (see
23 § 982.627);

24 (2) The unit is eligible (see § 982.628); and

25 (3) The family has satisfactorily completed the PHA program of required
26 pre-assistance homeownership counseling (see § 982.630).

27 (b) Additional PHA requirements. The PHA may limit homeownership
28 assistance to families or purposes defined by the PHA. The PHA may also
29 prescribe additional requirements for commencement of homeownership assistance
30 for a family. Any such limits or additional requirements must be described in
31 the PHA administrative plan.

1 (c) Environmental requirements. The PHA is responsible for complying
2 with the authorities listed in § 58.6 of this chapter requiring the purchaser
3 to obtain and maintain flood insurance for units in special flood hazard
4 areas, prohibiting assistance for acquiring units in the coastal barriers
5 resource system, and requiring notification to the purchaser of units in
6 airport runway clear zones and airfield clear zones.

7
8 **§ 982.627 Homeownership option: Eligibility requirements for families.**

9 (a) Determination whether family is qualified. The PHA may not provide
10 homeownership assistance for a family unless the PHA determines that the
11 family satisfies all of the following initial requirements at commencement of
12 homeownership assistance for the family:

13 (1) The family has been admitted to the Section 8 Housing Choice
14 Voucher program, in accordance with subpart E of this part.

15 (2) The family satisfies any first-time homeowner requirements
16 (described in paragraph (b) of this section).

17 (3) The family satisfies the minimum income requirement (described in
18 paragraph (c) of this section).

19 (4) The family satisfies the employment requirements (described in
20 paragraph (d) of this section).

21 (5) The family has not defaulted on a mortgage securing debt to
22 purchase a home under the homeownership option (see paragraph (e) of this
23 section).

24 (6) Except for cooperative members who have acquired cooperative
25 membership shares prior to commencement of homeownership assistance, no family
26 member has a present homeownership interest in a residence at the commencement
27 of homeownership assistance for the purchase of any home.

28 (7) Except for cooperative members who have acquired cooperative
29 membership shares prior to the commencement of homeownership assistance, the
30 family has entered a contract of sale in accordance with § 982.630(c).

31 (8) The family also satisfies any other initial requirements

established by the PHA (see § 982.626(b)). Any such additional requirements must be described in the PHA administrative plan.

(b) First-time homeowner requirements. At commencement of homeownership assistance for the family, the family must be any of the following:

(1) A first-time homeowner (defined at § 982.4);

(2) A cooperative member (defined at § 982.4); or

(3) A family of which a family member is a person with disabilities, and use of the homeownership option is needed as a reasonable accommodation so that the program is readily accessible to and usable by such person, in accordance with part 8 of this title.

~~income~~ ^{household resources}
(c) Minimum income requirements. (1) At commencement of homeownership assistance for the family, the family must demonstrate that the qualified household resources (income and EITC and food stamps) monthly income (gross income), as determined by the PHA in accordance with § 5.609 of this chapter, of the adult family members who will own the home at commencement of homeownership assistance is not less than the Federal minimum hourly wage multiplied by 2,000 hours.

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this chapter), the PHA shall not count any welfare assistance received by the family in determining qualified monthly income under this section.

(ii) The disregard of welfare assistance income under paragraph (b)(2)(i) of this section only affects the determination of minimum monthly income used to determine if a family initially qualifies for commencement of homeownership assistance in accordance with this section, but does not affect:

(A) The determination of income-eligibility for admission to the voucher program;

(B) Calculation of the amount of the family's total tenant payment (gross family contribution); or

(C) Calculation of the amount of homeownership assistance payments on behalf of the family.

(iii) In the case of an elderly family or a disabled family, the PHA shall count welfare assistance in determining qualified monthly income.

(d) Employment requirements. (1) Except as provided in paragraph (d)(2) of this section, the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

(i) Is currently employed on a full-time basis; and

(ii) Has been continuously so employed during the year before commencement of homeownership assistance for the family.

(2) The PHA shall have discretion to determine whether and to what extent brief interruptions are considered to break continuity of employment during the year. The PHA may count successive employment during the year. The PHA may count self-employment in a business.

(3) The employment requirement does not apply to an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this chapter). Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA shall grant an exemption from the employment requirement if the PHA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with part 8 of this title.

(e) Prohibition against mortgage defaults. The PHA shall not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option, and has defaulted on a mortgage securing debt incurred to purchase the home.

§ 982.628 Homeownership option: Eligible units.

(a) Initial requirements applicable to the unit. The PHA must determine that the unit satisfies all of the following requirements:

(1) The unit is eligible. (See § 982.352. Paragraphs (a)(6), (a)(7) and (b) of § 982.352 do not apply.)

(2) The unit was either under construction or already existing at the time the PHA determined that the family was eligible for homeownership assistance to purchase the unit.

(3) The unit is either a one unit property or a single dwelling unit in a cooperative or condominium.

(4) The unit has been inspected by a PHA inspector and by an independent inspector designated by the family (see § 982.631).

(5) The unit satisfies the HQS (see § 982.401 and § 982.631).

(b) PHA disapproval of seller. The PHA may not commence homeownership assistance for occupancy of a home if the PHA has been informed (by HUD or otherwise) that the seller of the home is debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

§ 982.629 Homeownership option: Additional PHA requirements for family search and purchase.

(a) The PHA may establish the maximum time for a family to locate a home to purchase, and to purchase the home.

(b) The PHA may require periodic family reports on the family's progress in finding and purchasing a home.

(c) If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

§ 982.630 Homeownership option: Homeownership counseling.

(a) Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA (pre-assistance counseling).

(b) Suggested topics for the PHA-required pre-assistance counseling program include:

(1) Home maintenance (including care of the grounds);

(2) Budgeting and money management;

(3) Credit counseling;

(4) How to negotiate the purchase price of a home;

(5) How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;

(6) How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;

(7) Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;

(8) Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and

(9) Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and federal truth-in-lending laws, and how to identify and avoid loans with **oppressive** terms and conditions.

(c) The PHA may adapt subjects covered in pre-assistance counseling (as listed in paragraph (b) of this section) to local circumstances and the needs of individual families.

(d) The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

(e) If the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

§ 982.631 Homeownership option: Home inspections and contract of sale.

(a) HQS inspection by PHA. The PHA may not commence homeownership

1 assistance for a family until the PHA has inspected the unit and has
2 determined that the unit passes HQS.

3 (b) Independent inspection. (1) The unit must also be inspected by an
4 independent professional inspector selected by and paid by the family.

5 (2) The independent inspection must cover major building systems and
6 components, including foundation and structure, housing interior and exterior,
7 and the roofing, plumbing, electrical, and heating systems. The independent
8 inspector must be qualified to report on property conditions, including major
9 building systems and components.

10 (3) The PHA may not require the family to use an independent inspector
11 selected by the PHA. The independent inspector may not be a PHA employee or
12 contractor, or other person under control of the PHA. However, the PHA may
13 establish standards for qualification of inspectors selected by families under
14 the homeownership option.

15 (4) The independent inspector must provide a copy of the inspection
16 report both to the family and to the PHA. The PHA may not commence
17 homeownership assistance for the family until the PHA has reviewed the
18 inspection report of the independent inspector. Even if the unit otherwise
19 complies with the HQS (and may qualify for assistance under the PHA's tenant-
20 based rental voucher program), the PHA shall have discretion to disapprove the
21 unit for assistance under the homeownership option because of information in
22 the inspection report.

23 (c) Contract of sale. (1) Before commencement of homeownership
24 assistance, a member or members of the family must enter into a contract of
25 sale with the seller of the unit to be acquired by the family. The family
26 must give the PHA a copy of the contract of sale (see also § 982.626(b)(6)).

27 (2) The contract of sale must:

28 (i) Specify the price and other terms of sale by the seller to the
29 purchaser.

30 (ii) Provide that the purchaser will arrange for a pre-purchase
31 inspection of the dwelling unit by an independent inspector selected by the

1 purchaser.

2 (iii) Provide that the purchaser is not obligated to purchase the unit
3 unless the inspection is satisfactory to the purchaser.

4 (iv) Provide that the purchaser is not obligated to pay for any
5 necessary repairs.

6 (v) Contain a certification from the seller that the seller has not
7 been debarred, suspended, or subject to a limited denial of participation
8 under part 24 of this chapter.

9
10 **§ 982.632 Homeownership option: Financing purchase of home; affordability of**
11 **purchase.**

12 (a) The PHA may establish requirements for financing purchase of a home
13 to be assisted under the homeownership option. Such PHA requirements may
14 include requirements concerning qualification of lenders (for example,
15 prohibition of seller financing or case-by-case approval of seller financing),
16 or concerning terms of financing (for example, a prohibition of balloon
17 payment mortgages, or establishment of a minimum homeowner equity requirement
18 from personal resources).

19 (b) If the purchase of the home is financed with FHA mortgage
20 insurance, such financing is subject to FHA mortgage insurance requirements.

21 (c) The PHA may establish requirements or other restrictions concerning
22 refinancing of debt incurred for purchase of the home, or concerning financing
23 for improvement or repair of the home.

24 (d) The PHA may review lender qualifications and the loan terms before
25 authorizing homeownership assistance. The PHA may disapprove proposed
26 financing, refinancing or financing for improvements or repairs if the PHA
27 determines that the debt is unaffordable, or if the PHA determines that the
28 lender or the loan terms do not meet PHA qualifications. In making this
29 determination, the PHA may take into account other family expenses, such as
30 child care, unreimbursed medical expenses, homeownership expenses, and other
31 family expenses as determined by the PHA.

(e) All PHA financing or affordability requirements must be described in the PHA administrative plan.

§ 982.633 Homeownership option: Continued assistance requirements; Family obligations.

(a) Occupancy of home. Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

(b) Family obligations. The family must comply with the following obligations.

(1) Ongoing counseling. To the extent required by the PHA, the family must attend and complete ongoing homeownership and housing counseling.

(2) Compliance with mortgage. The family must comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

(3) Prohibition against conveyance or transfer of home. (i) So long as the family is receiving homeownership assistance, use and occupancy of the home is subject to § 982.551(h) and (i).

(ii) In the case of assistance for a homeowner, the family may grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

(iii) Upon death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of title by operation of law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members in accordance with § 982.551(h).

(4) Supplying required information. (i) The family must supply required information to the PHA in accordance with § 982.551(b).

(ii) In addition to other required information, the family must supply any information as required by the PHA or HUD concerning:

(A) Any mortgage or other debt incurred to purchase the home, and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), and information on any satisfaction or payment of the mortgage debt;

(B) Any sale or other transfer of any interest in the home; or

(C) The family's homeownership expenses.

(5) Notice of move-out. The family must notify the PHA before the family moves out of the home.

(6) Notice of mortgage default. The family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

(7) Prohibition on homeownership interest on second residence. During the time the family receives homeownership assistance under this subpart, no family member may have any homeownership interest in any other residential property.

(8) Additional PHA requirements. The PHA may establish additional requirements for continuation of homeownership assistance for the family (for example, a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership assistance). The family must comply with any such requirements.

(9) Other family obligations. The family must comply with the obligations of a participant family described in § 982.551. However, the following provisions do not apply to assistance under the homeownership option: § 982.551(c), (d), (e), (f), (g) and (j).

(c) Statement of homeowner obligations. Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD. In the statement, the family agrees to comply with all family obligations under the homeownership option.

§ 982.634 Homeownership option: Maximum term of homeownership assistance.

1 (a) Maximum term of assistance. Except in the case of a family that
2 qualifies as an elderly or disabled family (see paragraph (c) of this
3 section), the family members described in paragraph (b) of this section shall
4 not receive homeownership assistance for more than:

5 (1) Fifteen years, if the initial mortgage incurred to finance
6 purchase of the home has a term of 20 years or longer; or

7 (2) Ten years, in all other cases.

8 (b) Applicability of maximum term. The maximum term described in
9 paragraph (a) of this section applies to any member of the family who:

10 (1) Has an ownership interest in the unit during the time that
11 homeownership payments are made; or

12 (2) Is the spouse of any member of the household who has an ownership
13 interest in the unit during the time homeownership payments are made.

14 (c) Exception for elderly and disabled families. (1) As noted in
15 paragraph (a) of this section, the maximum term of assistance does not apply
16 to elderly and disabled families.

17 (2) In the case of an elderly family, the exception only applies if the
18 family qualifies as an elderly family at the start of homeownership
19 assistance. In the case of a disabled family, the exception applies if at any
20 time during receipt of homeownership assistance the family qualifies as a
21 disabled family.

22 (3) If, during the course of homeownership assistance, the family
23 ceases to qualify as a disabled or elderly family, the maximum term becomes
24 applicable from the date homeownership assistance commenced. However, such a
25 family must be provided at least 6 months of homeownership assistance after
26 the maximum term becomes applicable (provided the family is otherwise eligible
27 to receive homeownership assistance in accordance with this part).

28 (d) Assistance for different homes or PHAs. If the family has received
29 such assistance for different homes, or from different PHAs, the total of such
30 assistance terms is subject to the maximum term described in paragraph (a) of
31 this section.

1
2 § 982.635 Homeownership option: Amount and distribution of monthly
3 homeownership assistance payment.

4 (a) Amount of monthly homeownership assistance payment. While the
5 family is residing in the home, the PHA shall pay a monthly homeownership
6 assistance payment on behalf of the family that is equal to the lower of:

- 7 (1) The payment standard minus the total tenant payment; or
8 (2) The family's monthly homeownership expenses minus the total tenant
9 payment.

10 (b) Payment standard for family. (1) The payment standard for a family
11 is the lower of:

- 12 (i) The payment standard for the family unit size; or
13 (ii) The payment standard for the size of the home.
14 (2) If the home is located in an exception rent area, the PHA must use
15 the appropriate payment standard for the exception rent area.

16 (3) The payment standard for a family is the greater of:

- 17 (i) The payment standard (as determined in accordance with paragraphs
18 (b) (1) and (b) (2) of this section) at the commencement of homeownership
19 assistance for occupancy of the home; or
20 (ii) The payment standard (as determined in accordance with paragraphs
21 (b) (1) and (b) (2) of this section) at the most recent regular reexamination of
22 family income and composition since the commencement of homeownership
23 assistance for occupancy of the home.

24 (4) The PHA must use the same payment standard schedule, payment
25 standard amounts, and subsidy standards pursuant to § 982.505 for the
26 homeownership option as for the rental voucher program.

27 (c) Determination of homeownership expenses. (1) The PHA shall adopt
28 policies for determining the amount of homeownership expenses to be allowed by
29 the PHA in accordance with HUD requirements.

30 (2) Homeownership expenses for a homeowner may only include amounts
31 allowed by the PHA to cover:

1 (i) Principal and interest on initial mortgage debt and any mortgage
2 insurance premium incurred to finance purchase of the home and any refinancing
3 of such debt;

4 (ii) Real estate taxes and public assessments on the home;

5 (iii) Home insurance;

6 (iv) The PHA allowance for maintenance expenses;

7 (v) The PHA allowance for costs of major repairs and replacements;

8 (vi) The PHA utility allowance for the home; and

9 (vii) Principal and interest on mortgage debt incurred to finance costs
10 for major repairs, replacements or improvements for the home. If a member of
11 the family is a person with disabilities, such debt may include debt incurred
12 by the family to finance costs needed to make the home accessible for such
13 person, if the PHA determines that allowance of such costs as homeownership
14 expenses is needed as a reasonable accommodation so that the homeownership
15 option is readily accessible to and usable by such person, in accordance with
16 part 8 of this title.

17 (3) Homeownership expenses for a cooperative member may only include
18 amounts allowed by the PHA to cover:

19 (i) The cooperative charge under the cooperative occupancy agreement
20 including payment for real estate taxes and public assessments on the home;

21 (ii) Principal and interest on initial debt incurred to finance
22 purchase of cooperative membership shares and any refinancing of such debt or
23 other mortgage debt;

24 (iii) Home insurance;

25 (iv) The PHA allowance for maintenance expenses;

26 (v) The PHA allowance for costs of major repairs and replacements;

27 (vi) The PHA utility allowance for the home; and

28 (vii) Principal and interest on debt incurred to finance major repairs,
29 replacements or improvements for the home.

30 (4) If the home is a cooperative or condominium unit, homeownership
31 expenses may also include cooperative or condominium operating charges or

1 maintenance fees assessed by the condominium or cooperative homeowner
2 association.

3 (d) Payment to lender or family. The PHA must pay homeownership
4 assistance payments either:

5 (1) Directly to the family or;

6 (2) At the discretion of the PHA to a lender on behalf of the family.

7 If the assistance payment exceeds the amount due to the lender, the PHA must
8 pay the excess directly to the family.

9 (e) Automatic termination of homeownership assistance. Homeownership
10 assistance for a family terminates automatically 180 calendar days after the
11 last housing assistance payment on behalf of the family. However, a PHA has
12 the discretion to grant relief from this requirement in those cases where
13 automatic termination would result in extreme hardship for the family.
14

15 **§ 982.636 Homeownership option: Portability.**

16 (a) General. A family may qualify to move outside the initial PHA
17 jurisdiction with continued homeownership assistance under the voucher program
18 in accordance with this section.

19 (b) Portability of homeownership assistance. Subject to § 982.353(b)
20 and (c), § 982.552, and § 982.553, a family determined eligible for
21 homeownership assistance by the initial PHA may purchase a unit outside of the
22 initial PHA's jurisdiction, if the receiving PHA is administering a voucher
23 homeownership program and is accepting new homeownership families.

24 (c) Applicability of Housing Choice Voucher program portability
25 procedures. In general, the portability procedures described in §§ 982.353
26 and 982.355 apply to the homeownership option and the administrative
27 responsibilities of the initial and receiving PHA are not altered except to
28 the extent that an administrative function (e.g., issuance of a voucher or
29 execution of a tenancy addendum) is not applicable to the homeownership
30 option.

31 (d) Family and PHA responsibilities. The family must attend the

briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

(e) Continued assistance under § 982.637. Such continued assistance under portability procedures is subject to § 982.637.

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

(a) Move to new unit. (1) A family receiving homeownership assistance may move to a new unit with continued tenant-based assistance in accordance with this section. The family may move either with voucher rental assistance (in accordance with rental assistance program requirements) or with voucher homeownership assistance (in accordance with homeownership option program requirements).

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

(b) Requirements for continuation of homeownership assistance. The PHA must determine that all initial requirements listed in § 982.626 have been satisfied if a family that has received homeownership assistance wants to move to a new unit with continued homeownership assistance. However, the following requirements do not apply:

(1) The requirement for pre-assistance counseling (§ 982.630) is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued assistance under the homeownership option).

(2) The requirement that a family must be a first-time homeowner (§ 982.627) is not applicable.

(c) When PHA may deny permission to move with continued assistance.

1 The PHA may deny permission to move to a new unit with continued voucher
2 assistance as follows:

3 (1) Lack of funding to provide continued assistance. The PHA may
4 deny permission to move with continued rental or homeownership assistance if
5 the PHA determines that it does not have sufficient funding to provide
6 continued assistance.

7 (2) Termination or denial of assistance under § 982.638. At any time,
8 the PHA may deny permission to move with continued rental or homeownership
9 assistance in accordance with § 982.638.

10
11 § 982.638 Homeownership option: Denial or termination of assistance for
12 family.

13 (a) General. The PHA shall terminate homeownership assistance for the
14 family, and shall deny voucher rental assistance for the family, in accordance
15 with this section.

16 (b) Denial or termination of assistance under basic voucher program.
17 At any time, the PHA may deny or terminate homeownership assistance in
18 accordance with § 982.552 (Grounds for denial or termination of assistance) or
19 § 982.553 (Crime by family members).

20 (c) Failure to comply with family obligations. The PHA may deny or
21 terminate assistance for violation of participant obligations described in §
22 982.551 or § 982.633.

23 (d) Mortgage default. The PHA must terminate voucher homeownership
24 assistance for any member of family receiving homeownership assistance that is
25 dispossessed from the home pursuant to a judgment or order of foreclosure on
26 any mortgage (whether FHA-insured or non-FHA) securing debt incurred to
27 purchase the home, or any refinancing of such debt. The PHA, in its
28 discretion, may permit the family to move to a new unit with continued voucher
29 rental assistance. However, the PHA must deny such permission, if:

- 30 (1) The family defaulted on an FHA-insured mortgage; and
31 (2) The family fails to demonstrate that:

(i) The family has conveyed title to the home, as required by HUD, to HUD or HUD's designee; and

(ii) The family has moved from the home within the period established or approved by HUD.

§ 982.639 Homeownership option: Administrative fees.

The ongoing administrative fee described in § 982.152(b) is paid to the PHA for each month that homeownership assistance is paid by the PHA on behalf of the family.

§ 982.640 Homeownership option: Recapture of homeownership assistance.

(a) General. The PHA shall recapture a percentage of the homeownership assistance provided to the family upon the family's sale or refinancing of the home.

(b) Securing the PHA's right of recapture. Upon purchase of the home, a family receiving homeownership assistance shall execute documentation as required by HUD, and consistent with State and local law, that secures the PHA's right to recapture the homeownership assistance in accordance with this section. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

(c) Recapture amount for sales. In the case of the sale of the home, the recapture shall be in an amount equalling the lesser of:

(1) The amount of homeownership assistance provided to the family, adjusted as described in paragraph (f) of this section; or

(2) The difference between the sales price and purchase price of the home, minus:

(i) The costs of any capital expenditures;

(ii) The costs incurred by the family in the sale of the home (such as sales commission and closing costs);

(iii) The amount of the difference between the sales price and purchase price that is being used, upon sale, towards the purchase of a new home under

1 the Section 8 homeownership option; and

2 (iv) Any amounts that have been previously recaptured, as a result of
3 refinancing, in accordance with paragraph (d) of this section.

4 (d) Recapture amount for refinancing. In the case of a refinancing of
5 the home, the recapture shall be in an amount equalling the lesser of:

6 (1) The amount of homeownership assistance provided to the family,
7 adjusted as described in paragraph (f) of this section; or

8 (2) The difference between the current mortgage debt and the new
9 mortgage debt; minus:

10 (i) The costs of any capital expenditures;

11 (ii) The costs incurred by the family in the refinancing of the home
12 (such as closing costs); and

13 (iii) Any amounts that have been previously recaptured as a result of
14 refinancing.

15 (e) Use of sales price in determining recapture amount. The recapture
16 amount shall be determined using the actual sales price of the home, unless
17 the sale is to an identity-of-interest entity. In the case of identity-of-
18 interest transactions, the PHA shall establish a sales price based on fair
19 market value.

20 (f) Automatic reduction of recapture amount. The amount of
21 homeownership assistance subject to recapture will automatically be reduced
22 over a 10 year period, beginning one year from the purchase date, in annual
23 increments of 10 percent. At the end of the 10 year period, the amount of
24 homeownership assistance subject to recapture will be zero.

25
26 **§ 982.641 Homeownership option: Applicability of other requirements.**

27 (a) General. The following types of provisions (located in other
28 subparts of this part 982) do not apply to assistance under the homeownership
29 option:

30 (1) Any provisions concerning the Section 8 owner or the HAP contract
31 between the PHA and owner;

(2) Any provisions concerning the assisted tenancy or the lease between the family and the owner;

(3) Any provisions concerning PHA approval to lease a unit;

(4) Any provisions concerning rent to owner or reasonable rent; and

(5) Any provisions concerning the issuance or term of a certificate or voucher.

(b) Subpart G requirements. The following provisions of this part 982, subpart G do not apply to assistance under the homeownership option:

(1) Section 982.302 (Issuance of voucher; Requesting PHA approval of assisted family);

(2) Section 982.303 (Term of voucher);

(3) Section 982.305 (PHA approval of assisted tenancy);

(4) Section 982.306 (PHA disapproval of owner);

(5) Section 982.307 (Tenant screening);

(6) Section 982.308 (Lease and tenancy);

(7) Section 982.309 (Term of ~~assisted~~ tenancy);

(8) Section 982.310 (Owner termination of tenancy);

(9) Section 982.311 (When assistance is paid) (except that § 982.311(c) (3) is applicable to assistance under the homeownership option);

(10) Section 982.313 (Security deposit: Amounts owed by tenant); and

(11) Section 982.314 (Move with continued tenant-based assistance) (except that paragraphs § 982.314(c) and (d) (2) are applicable).

(c) Subpart H requirements. The following provisions of this part 982, subpart H do not apply to assistance under the homeownership option:

(1) Section 982.352(a) (6) (Prohibition of owner-occupied assisted unit);

(2) Section 982.352(b) (PHA-owned housing); and

(3) Those provisions of § 982.353(b) (1), (2), and (3) (Where family can lease a unit with tenant-based assistance) and § 982.355 (Portability: Administration by receiving PHA) that are inapplicable per § 982.636;

(d) Subpart I requirements. The following provisions of this part 982,

subpart I do not apply to assistance under the homeownership option:

(1) Section 982.403 (Terminating HAP contract when unit is too small);

(2) Section 982.404 (Maintenance: Owner and family responsibility; PHA remedies); and

(3) Section 982.405 (PHA initial and periodic unit inspection).

(e) Subpart J requirements. ~~Except for § 982.455 (Automatic termination of HAP contract), the requirements of~~ part 982, subpart J (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451-4576) do not apply to assistance under the homeownership option.

(f) Subpart K requirements. Except for those sections listed below, the requirements of this part 982, subpart K (Rent and Housing Assistance Payment) (§§ 982.501-521) do not apply to assistance under the homeownership option:

(1) Section 982.504 (Maximum subsidy; FMR/exception rent limit);

(2) Section 982.516 (Family income and composition: Regular and interim reexaminations); and

(3) Section 982.517 (Utility allowance schedule).

(g) Subpart L requirements. The following provisions of 24 CFR part 982, subpart L, do not apply to assistance under the homeownership option:

(1) Section 982.551(c) (HQS breach caused by family);

(2) Section 982.551(d) (Allowing HQS inspection); and

(3) Section 982.551(j) (Interest in unit).

Dated: _____

Harold Lucas, Assistant Secretary for
Public and Indian Housing