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Section 8 Homeownership [binder] [4]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 903 and 982

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

RIN: 2577-AB90

Section 8 Homeownership Program

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

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION:

I. Background

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

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 ~~The preamble to the April 20, 1999 proposed rule provides additional~~
 9 ~~details regarding the amendments to 24 CFR part 982, subpart M.~~

why not
add it?

11 **II. Summary of Changes Made by this Final Rule to the April 30, 1999 Proposed** 12 **Rule**

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

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

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

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

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

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

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

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

31 7. Reorganization of eligibility requirements (§§ 982.626, 982.627, and

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

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

~~9. Families eligible for homeownership assistance (§ 982.627(b)(4)). The final rule provides that the PHA may make homeownership assistance available to families other than those types identified in § 982.627(b)(1)-(3) (i.e., first time homeowners, cooperative members, and family members with disabilities requiring homeownership assistance as a reasonable accommodation). The PHA must describe in the PHA administrative plan the circumstances of families who do not fall under one of the categories listed in § 982.627(b)(1)-(3), but who the PHA has determined to make eligible for homeownership assistance.~~

9. Prohibition on the provision of homeownership assistance to family

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

6 10. Establishment of national minimum income requirement
7 (§ 982.627(c)). At the request of several public commenters, the final rule
8 establishes a national minimum income requirement that is equal to 2,000 hours
9 of yearly full-time work at the Federal minimum wage.

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

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

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

26 14. Eligible homes for purchase under the homeownership option
27 (§ 982.628(a)(2)). The final rule provides that a home is eligible for
28 purchase under the homeownership option if, at the time the PHA determines
29 that the family is eligible to purchase the home with homeownership
30 assistance, the home is either under construction or already existing.

31 15. Provision of homeownership counseling (§ 982.630(b)). The final

1 rule clarifies that, although the PHA must require pre-assistance
2 homeownership counseling, the PHA is not itself obligated to provide the
3 required counseling.

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

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

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

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

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

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

1 under 24 CFR part 24.

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

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

14 24. PHA disapproval of lender qualifications and loan terms (§
15 982.632(d)). This final rule clarifies that the PHA may review lender
16 qualifications and the loan terms before authorizing homeownership assistance.
17 The PHA may disapprove proposed financing, refinancing or financing for
18 improvements or repairs if the PHA determines that the debt is unaffordable,
19 or if the PHA determines that the lender or the loan terms do not meet PHA
20 qualifications.

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

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

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

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

9 28. Applicability of maximum term for homeownership assistance
10 (§ 982.634). The final rule clarifies that the maximum term for homeownership
11 assistance applies to any member of the household who has an ownership
12 interest in the unit during any time that homeownership payments are made, or
13 is the spouse of any member of the household who has an ownership interest in
14 the unit at the time homeownership payments are made.

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

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

28 29. Inclusion of accessibility modifications as homeownership expenses
29 (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the
30 family is a person with disabilities, eligible homeownership expenses may
31 include debt incurred to finance costs needed to make the home accessible for

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

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

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

~~31. Automatic termination of homeownership assistance (§ 982.635(e)). The final rule clarifies that homeownership assistance for a family terminates automatically 180 calendar days after the last housing assistance payment on behalf of the family. This requirement is also applicable to tenant-based rental assistance.~~

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

33. Prohibition on provision of continued assistance to family with

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

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

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

Seems inconsistent

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

28 The final rule 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

homeownership subsidy may be subordinated to a refinanced mortgage. ~~Any refinancing must be subordinate to the lien securing the recapture of homeownership subsidy.~~ 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.

on a case by case basis? why?

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

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

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

IV. Discussion of General Comments Not Regarding a Specific Regulatory

1 **Section**

2 A. Support for Proposed Rule

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

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

17 B. General Concerns About the Proposed Rule

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

31 HUD response. Section 8(y) provides that a PHA, in its discretion, may

1 make Section 8 homeownership assistance available to eligible families. HUD
2 anticipates that PHAs will consider local circumstances (such as the
3 availability of other local resources) when deciding whether or not to
4 implement a homeownership program.

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

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

26 HUD response. The final rule continues to provide PHAs with broad
27 administrative flexibility over the homeownership option. Where HUD has
28 determined that uniformity is appropriate (such as in the areas of minimum
29 income and maximum term of assistance), this final rule establishes uniform
30 Federal standards. However, HUD continues to believe that administrative
31 flexibility is essential for the program to address local needs, adapt to

1 local markets, and permit localized financing strategies in order to achieve
2 success in individual communities. The approach of the final rule is
3 consistent with two of the purposes of the Public Housing Reform Act: to
4 deregulate PHAs, and to provide more flexible use of Federal assistance to
5 PHAs (see section 505(b) of the Public Housing Reform Act).

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

14 C. Comments Regarding Persons with Disabilities

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

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

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

31 HUD Response: The final rule provides that PHAs may offer post-purchase

1 counseling, and HUD encourages the use of such counseling to further lessen
2 the risk of defaults. However, it would be inappropriate to limit post-
3 purchase counseling to persons with disabilities, and HUD believes it would be
4 inappropriate to presume that persons with disabilities require additional
5 scrutiny because they are more likely to default on their mortgages.
6 Accordingly, HUD has not adopted the suggestion made by the commenter.

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

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

22 HUD response. The provision of homeownership assistance as a reasonable
23 accommodation is determined on a case-by-case basis by the PHA. The PHA will
24 determine what is reasonable based on the specific circumstances and
25 individual needs of the person with a disability. It is the sole
26 responsibility of the PHA to determine whether it is reasonable to implement a
27 homeownership program as a reasonable accommodation. For example, depending
28 on the individual circumstances, the PHA may determine that it is a reasonable
29 accommodation to provide homeownership assistance when the PHA has implemented
30 a limited homeownership program and is currently assisting the maximum number
31 of homeowners in the PHA program. On the other hand, the PHA may determine

1 that it is not reasonable to provide homeownership assistance as a reasonable
2 accommodation in cases where the PHA has otherwise opted not to implement a
3 homeownership program.

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

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). Accordingly, as specified in
13 § 982.301, the PHA, in briefing a family that includes any person with
14 disabilities, must take appropriate steps to ensure effective communication in
15 accordance with 24 CFR 8.6.

16 D. Comments Regarding the Role of No-profits

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

28 HUD response. While the final rule does not require the PHA to partner
29 with a nonprofit, the PHA may wish to consider subcontracting with nonprofits
30 for administration of one or more of the responsibilities under the
31 homeownership program, just as it may contract out other PHA functions in

1 administering the Section 8 Housing Choice Voucher program. Alternatively,
2 the PHA may wish to consult with nonprofit organizations with homeownership
3 experience in designing the PHA's homeownership program. HUD encourages PHAs
4 lacking in homeownership program experience to explore the possibility of
5 working with experienced nonprofits through partnerships or contractual
6 arrangements to design and administer a successful section 8(y) program.
7 Regardless of the PHA approach to the delivery of PHA responsibilities, the
8 PHA is always responsible for overall compliance with program requirements.

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

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

26 E. Comments Regarding Income Targeting

27 Comment: The final rule should clarify whether Section 8 homeownership
28 subsidies are subject to the same income targeting requirements as the Section
29 8 rental assistance program. A few commenters wrote that if the new income
30 targeting requirements of the Public Housing Reform Act apply, the
31 requirements will reduce the pool of families eligible for Section 8

1 homeownership assistance.

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

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

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

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

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

1 community's needs and objectives in the administrative policies of the
2 program.

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

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

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

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

27 HUD response. Section 8(y) does not regulate the lending industry.
28 Consequently, the final rule does not impose any requirement on lenders to
29 treat the subsidy in a certain manner, nor does the rule prohibit
30 discrimination by lenders based on source of income. Lenders will apply
31 their underwriting criteria for financing of homes to be purchased under the

1 Section 8 homeownership program. HUD notes that, to the extent applicable,
2 lenders must comply with the Equal Credit Opportunity Act (15 U.S.C. 1601 et
3 seq.) (referred to as "ECOA") and the implementing regulations issued by the
4 Federal Reserve Board at 12 CFR part 202. ECOA prohibits lending
5 discrimination, including discrimination based on receipt of public
6 assistance.

7 H. Comments Regarding Mortgage Defaults

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

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

17 I. Other General Comments

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

21 The PHA may choose to make homeownership assistance freely available for
22 any qualified applicant or participant, or to restrict homeownership
23 assistance to families or purposes defined by the agency. (64 FR 23488)
24

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

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

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

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

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

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

21 Comment: HUD should isolate Section 8 homeownership loans from other
22 FHA loans. One commenter wrote that loans under the Section 8 homeownership
23 program will likely have higher default ratios than other loans, and that
24 lenders originating these loans would be penalized when their default numbers
25 are higher than those of their peers who have not participated in the program.
26 Specifically, the commenter wrote that lenders participating in the Section 8
27 homeownership program might unfairly lose their FHA approved lender status.
28 Therefore, the commenter suggested that HUD's tracking systems should isolate
29 loans issued under the Section 8 homeownership program from other FHA loans.

30 HUD response. Lenders will use normal FHA underwriting criteria for
31 FHA-insured loans. As a result, HUD does not anticipate a higher than average

1 default rate and HUD does not intend to track these loans separately.

2 J. General Questions About the Proposed Rule

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

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

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

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

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

17 HUD response. In response to this comment, HUD has revised the
18 definition of "net family assets" found in 24 CFR 5.603(d). The revised
19 definition excludes the value of a home currently being purchased with Section
20 8 homeownership assistance. This exclusion is limited to the first 10 years
21 after the purchase date of the home. ~~through the homeownership option for~~
22 ~~purposes of determining the family's annual income under 24 CFR 5.609 during~~
23 ~~the period the family is receiving Section 8 homeownership assistance.~~

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

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

31 Comment: If the lender is relying on the Section 8 assistance to secure

1 the mortgage, is the family, the PHA, or HUD is responsible for payment of the
2 note?

3 HUD response. Neither the PHA nor HUD is guarantor of mortgage note for
4 a home being purchased under the Section 8 program. The terms of the loan
5 note will determine who is responsible for payment (usually the family) of the
6 loan.
7

8 **V. Discussion of Comments Regarding a Specific Regulatory Section**

9 For the convenience of readers, the discussion that follows is organized
10 by the regulatory section of the proposed rule it pertains to (e.g.,
11 § 982.625, § 982.633, etc.).

12 **A. Definitions (§ 982.4)**

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

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

28 Comment: The definition of "cooperative" should not be limited to
29 "housing owned by a nonprofit corporation or association." One commenter
30 wrote that many housing cooperatives are incorporated under their home state's
31 business corporation act. The commenter suggested that by dropping the word

"nonprofit," the definition would better reflect the reality of diverse legal practices among states. Another commenter wrote that the proposed definition is unnecessarily intrusive, imposes unnecessary administrative functions, and unduly hinders the use of cooperative housing.

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

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

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

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

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

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

Other commenters wrote that a lease-purchase family should be subject to the independent professional home inspection requirements of the homeownership

1 program before entering into a lease-purchase arrangement. These commenters
2 wrote that it would be devastating to a lease-purchase family to reach the
3 purchase option stage only to discover that the purchase is jeopardized due to
4 a property defect.

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

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

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

23 C. Cooperative housing (§ 982.619).

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

1 their midst.

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

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

14 HUD response. This comment, which appears to relate only to Section 8
15 rental assistance, is outside the scope of this rulemaking, which implements
16 the "homeownership option" authorized by section 8(y) of the 1937 Act. HUD
17 notes, however, that the final rule provides that the costs of purchasing a
18 cooperative unit may be included as a "homeownership expense" for purposes of
19 determining the amount of monthly homeownership assistance payment (see §
20 982.634(c)(4)).

21 D. Homeownership option: General (§ 982.625)

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

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

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

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

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

- A divorced spouse who does not retain homeownership interest;
- Persons with disabilities who lost a previous home as a result of becoming disabled;
- Any otherwise eligible person with a disability;

Why are we adding veterans when there was no comment

- Victims of domestic violence
- Current manufactured home owners
- Owners of substandard housing, and
- Single parents.

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

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

HUD response. HUD has carefully considered all of the suggested exemptions to the first-time homebuyer requirement and is sympathetic to the circumstances of families in many of the suggested categories. However, HUD has decided not to attempt to specify, by regulation, the many possible situations that may merit an exception to the first-time homebuyer requirement. ~~Instead, the final rule provides that the PHA may describe in the PHA administrative plan any special hardship cases or the circumstances of families who do not meet the definition of a first-time homeowner, but who the PHA has determined should be eligible for participation in the PHA homeownership program.~~

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

1 homeownership assistance.

2 In addition, HUD has further refined 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 phase of the program, reaches the PHA limit.

29 E. Initial requirements (§ 982.625)

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 a 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.

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

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

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

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

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

1 lender, not the PHA.

2 K. Homeownership counseling (\$ 962.629).

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-lease 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 not using 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 ~~cons~~idering the comments, HUD has not
11 changed the requirement that the unit must 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.

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

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

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

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

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

HUD response. The statute explicitly provides that the annual HQS inspection is not required for section 8(y) units. While the final rule does not require the PHA to conduct subsequent inspections of the unit, the final

rule clarifies that the additional requirements for continuation of homeownership assistance established by the PHA may include additional unit inspections while the family is receiving homeownership assistance (see § 982.633(b)(7)).

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

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

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

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

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

Comment: PHA administrative authority to establish financing requirements. Several commenters wrote that the PHA is not acting as the

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

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

HUD response. **[NOTE TO REVIEWERS: THE FOLLOWING RESPONSE WILL BE RE-WRITTEN TO MORE SPECIFICALLY REFERENCE JOINT HUD-TREASURY RECOMMENDATIONS ON PREDATORY LENDING]**

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

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

~~PHAs should consider analyzing~~ PHAs are encouraged to analyze each loan (including refinancing or financing for improvements or repairs) before providing assistance to determine whether the lender and the loan meet its

1 qualifications. PHAs should be particularly careful of loans with the
2 following features: loans in which financing costs represent a high percentage
3 of the total loan amount; loans that include high credit insurance premiums;
4 balloon payments that the borrower will be unable to repay; interest rates
5 (including variable rates) significantly higher than conventional mortgages;
6 pre-payment penalties, especially penalties that extend over long terms; high
7 ratios of family debt to income; and loans based on unverified sources of
8 income.

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

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

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

26 Comment: Final rule should not require or permit the PHA to establish
27 homebuyer downpayment requirements. Several commenters opposed any homebuyer
28 downpayment requirements under the homeownership program. One commenter wrote
29 that requiring families to make downpayments from their own resources will
30 effectively prevent families residing in expensive housing markets from ever
31 participating in the homeownership option. Another commenter wrote that

1 foreclosures are not caused by families choosing to walk away from a home
2 because they have equity invested but because they lose their income.

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

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

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

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

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

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

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

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

31 Another commenter wrote that the PHA's right to review and disapprove

1 financing should be limited to seller financing. The commenter wrote that
2 reputable mortgage lenders have no incentive to underwrite loans that will
3 default.

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

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

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

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

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

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

discourage lender participation in the program.

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

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

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

O. Maximum term of homeownership assistance (§ 982.633)

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

On the other hand, a number of commenters wrote that the ten year maximum term should be reduced to three, five, or seven years. These commenters stated that by providing a mortgage subsidy for ten or more years,

1 HUD would be promoting ongoing dependency on Section 8 assistance and reducing
2 the availability of limited Section 8 resources for other families.

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

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

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

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

31 The final rule provides for a mandatory term limit on homeownership

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

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

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

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

31 If, during the course of homeownership assistance, the family ceases to

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

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

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

18 P. Amount and distribution of monthly homeownership assistance payment
 19 (\$ 982.634)

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

27 HUD response. The length of time a family will remain eligible for a
 28 subsidy in the homeownership program is the same as in the rental program.
 29 During this time, the family has a subsidy slot reserved, thereby denying use
 30 of the assistance by another deserving family. In light of the severe needs
 31 for housing assistance and the length of time applicants must already wait to

1 receive assistance, HUD has not revised the rule to increase the length of
2 time the subsidy slot is reserved for a family who has a relatively high
3 income and no longer qualifies for a subsidy.

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

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

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

29 Several other commenters wrote that the payments should be made directly
30 to the family and not the lender. The commenters wrote that it would be an
31 administrative nightmare for lenders to be required to accept separate

1 payments from the homeowner (for the family's portion) and the PHA. The
2 commenters recommended that the assistance payment should be made by the PHA
3 as a direct automatic deposit into the family's bank account with provisions
4 for automatic withdrawal of the mortgage amount by the lender.

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

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

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

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

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

26 For example, a payment standard of 95% of the Fair Market Rent (FMR) might
27 work for the rental market, but for the for-sale market a payment standard of
28 105% might be more appropriate. Another commenter wrote that, if the unit
29 selected by the participating family is new, the PHA should have the latitude
30 to adjust the payment standard to account for the superiority of the housing
31 unit.

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

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

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

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

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

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

30 HUD response. The final rule clarifies that where a member of the
31 family is a person with disabilities, mortgage debt incurred to finance costs

1 for major repairs, replacements or improvements for the home may include debt
2 incurred by the family to finance costs needed to make the home accessible for
3 the disabled person, if the PHA determines the allowance is needed as a
4 reasonable accommodation.

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

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

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

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

1 Q. Portability (§ 982.635)

2 Comment: Applicability of portability to the homeownership program.

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

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

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

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

1 homeownership families.

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

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

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

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

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

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

1 home, regardless of whether the family chooses not to make that property their
2 primary residence.

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

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

23 The final rule establishes a new § 982.640 that provides for such
24 recaptures. PHAs shall recapture the homeownership assistance upon the sale
25 or refinancing of the home. Sales proceeds that are used by the family to
26 purchase a new home with Section 8 homeownership assistance are not subject to
27 recapture. Further, a family may refinance to take advantage of lower
28 interest rates, or better mortgage terms, without any recapture penalty. Only
29 those proceeds realized upon refinancing that are retained by the family (for
30 example during a "cash-out" of the refinanced debt) are subject to the new
31 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. ~~Any refinancing must be subordinate to the lien securing the recapture of homeownership subsidy.~~

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 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

1 before receiving rental assistance?

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

5 Comment: What ramifications should a family default have on continued
6 participation in the rental program Several commenters suggested that a
7 family that defaults on its mortgage should not be allowed to receive Section
8 8 rental assistance. The commenters recommended that the family should be
9 placed on the waiting list. However, there was no consensus among these
10 commenters regarding where on the waiting list the family should be placed.
11 For example, one commenter wrote that the family should not be penalized
12 through placement at the end of the waiting list. Another commenter, however,
13 recommended that a defaulting family should be placed at the bottom of the
14 Section 8 waiting list.

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

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

28 HUD response. The proposed and final rule both provide that the PHA may
29 terminate the family's participation in the voucher program if the family
30 fails to comply with the terms of the mortgage (for instance, if the family
31 defaults). Like other grounds for denial or termination of voucher

1 assistance, the decision whether to deny the family's continued participation
2 in the voucher program or to permit the family to automatically be placed back
3 on the waiting list rests with the PHA.

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

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

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

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

30 HUD response. As noted above, the PHA must deny the family continued
31 assistance if the family defaults on an FHA-insured mortgage and does not

1 comply with HUD requirements. HUD has not extended the mandatory termination
2 provision to a family who defaults on a non-FHA mortgage.

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

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

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

20 S. Administrative fees (§ 982.637)

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

28 HUD response. The final rule has not adopted these suggestions.
29 Section 8(y) is intended to provide PHAs with added flexibility in serving the
30 housing needs of their local communities within the existing framework and
31 funding constraints of the Section 8 Housing Choice Voucher program. HUD does

1 not have any additional or separate funding to increase administrative fees
2 for PHAs that choose to exercise the homeownership option.

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

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

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

21 22 **VI. 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 PHA does not issue the family a rental voucher or execute a housing~~
6 ~~assistance payment contract with a owner of rental property on behalf of the~~
7 ~~family participating in the homeownership option. Instead, the family and PHA~~
8 ~~execute a statement of homeowner obligations. Under the homeownership option~~
9 ~~the family provides the PHA with a copy of the contract of sale rather than~~
10 ~~submitting a Request for Tenancy Approval and a copy of the proposed lease.~~
11 ~~The homeownership option does require an independent pre purchase inspection~~
12 ~~in addition to the initial HQS inspection; however, this burden is off set by~~
13 ~~the removal of the requirement that the unit be subsequently inspected no less~~
14 ~~than annually.~~

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

19 Environmental Impact

20 A Finding of No Significant Impact (FONSI) with respect to the
21 environment was made in accordance with HUD regulations in 24 CFR part 50 that
22 implement section 102(2)(C) of the National Environmental Policy Act of 1969
23 (42 U.S.C. 4223) at the proposed rule stage. That FONSI remains applicable to
24 this final rule and is available for public inspection between 7:30 a.m. and
25 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General
26 Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh
27 Street, SW, Washington, DC.

28 Unfunded Mandates Reform Act

29 Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-
30 1538) establishes requirements for Federal agencies to assess the effects of
31 their regulatory actions on State, local, and tribal governments and the

private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

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

Impact on Small Entities

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

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

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

1 affect a substantial number of small entities.

2 Executive Order 13132, Federalism

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

15 Catalog of Domestic Assistance Number

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

18
 19 **List of Subjects**

20 24 CFR Part 5

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

27 24 CFR Part 903

28 Administrative practice and procedure, Public housing, Reporting and
 29 recordkeeping requirements

30 24 CFR Part 982

31 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. ~~through the Section 8 homeownership option during the period the family is receiving voucher homeownership assistance (see part 982, subpart M of this title).~~

* * * *

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

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

AUTHORITY: 42 U.S.C. 1437f and 3835(d).

6. Amend § 982.4 as follows:

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

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

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

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

§ 982.4 Definitions.

1 * * * *

2 (b) * * *

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

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

8 * * * *

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

12 * * * *

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

24 * * * *

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

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

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

1 family.

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

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

7 * * * * *

8 Interest in the home. In the homeownership option:

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

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

16 * * * * *

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

21 * * * * *

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

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

30 * * * * *

31

7. 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)).

* * * *

8. Add § 982.317 to read as follows:

§ 982.317 Lease-purchase agreements.

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

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

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

§ 982.352 Eligible housing.

(a) * * *

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

* * * * *

Subpart M--Special Housing Types

10. Amend § 982.601 as follows:

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

b. Remove paragraph (d);

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

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

e. Add new paragraphs (c) and (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 designate funding for special housing types, or for a specific special housing type (e.g. the homeownership option). Assistance for special housing types is paid from program funding available for the PHA's tenant-based program under the consolidated annual contributions contract.

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

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

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

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

* * * * *

11. Amend § 982.619 as follows:

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

§ 982.619 Cooperative housing.

(a) Assistance in cooperative housing. This section applies to rental assistance for a cooperative member residing in cooperative housing. However,

1 this section does not apply to:

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

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

8 * * * * *

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

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

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

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

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

31 (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 § 982.404.

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

* * * * *

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

Homeownership Option

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

§ 982.625 Homeownership option: General.

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

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

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

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

§ 982.626 Homeownership option: Initial requirements.

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

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

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

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

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

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

1
2 **§ 982.627 Homeownership option: Eligibility requirements for families.**

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

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

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

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

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

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

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

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

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

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

31 (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, ~~or~~

~~(4) A family in other circumstances described in the PHA administrative plan.~~

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

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

v. (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

1 a cooperative or condominium.

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

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

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

9
10 **§ 982.629 Homeownership option: Additional PHA requirements for family**
11 **search and purchase.**

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

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

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

19
20 **§ 982.630 Homeownership option: Homeownership counseling.**

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

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

- 27 (1) Home maintenance (including care of the grounds);
- 28 (2) Budgeting and money management;
- 29 (3) Credit counseling;
- 30 (4) How to negotiate the purchase price of a home;
- 31 (5) How to obtain homeownership financing and loan preapprovals,

1 including a description of types of financing that may be available, and the
2 pros and cons of different types of financing;

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

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

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

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

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

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

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

25
26 **§ 982.631 Homeownership option: Home inspections and contract of sale.**

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

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

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

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

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

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

(2) The contract of sale must:

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

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

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

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

1 necessary repairs.

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

5
6 **§ 982.632 Homeownership option: Financing purchase of home; affordability of**
7 **purchase.**

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

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

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

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

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

30
31 **§ 982.633 Homeownership option: Continued assistance requirements; Family**

1 obligations.

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

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

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

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

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

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

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

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

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

30 (A) Any mortgage or other debt incurred to purchase the home, and any
31 refinancing of such debt (including information needed to determine whether

1 the family has defaulted on the debt, and the nature of any such default), and
2 information on any satisfaction or payment of the mortgage debt;

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

4 (C) The family's homeownership expenses.

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

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

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

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

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

22 (c) Statement of homeowner obligations. Before commencement of
23 homeownership assistance, the family must execute a statement of family
24 obligations in the form prescribed by HUD. In the statement, the family
25 agrees to comply with all family obligations under the homeownership option.
26

27 **§ 982.634 Homeownership option: Maximum term of homeownership assistance.**

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

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

(2) Ten years, in all other cases.

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

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

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

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

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

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

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

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

(a) Amount of monthly homeownership assistance payment. While the

1 family is residing in the home, the PHA shall pay a monthly homeownership
2 assistance payment on behalf of the family that is equal to the lower of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

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

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

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

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

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

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

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

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

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

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

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

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

(1) Directly to the family or;

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

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

~~(e) Automatic termination of homeownership assistance. Homeownership assistance for a family terminates automatically 180 calendar days after the last housing assistance payment on behalf of the family.~~

§ 982.636 Homeownership option: Portability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The family fails to demonstrate that:

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

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

§ 982.639 Homeownership option: Administrative fees.

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

§ 982.640 Homeownership option: Recapture of homeownership assistance.

(a) General. The PHA shall recapture 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. ~~Any refinancing must be subordinate to the lien securing the recapture of the homeownership subsidy.~~

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

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

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

- (i) The costs of any capital expenditures;
- (ii) The costs incurred by the family in the sale of the home (such as sales commission and closing costs);
- (iii) The amount of the difference between the sales price and purchase price that is being used, upon sale, towards the purchase of a new home under the Section 8 homeownership option; and

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

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

- (1) The amount of homeownership assistance provided to the family,

adjusted as described in paragraph (f) of this section; or

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

- (i) The costs of any capital expenditures;
- (ii) The costs incurred by the family in the refinancing of the home (such as closing costs); and
- (iii) Any amounts that have been previously recaptured as a result of refinancing.

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

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

§ 982.641 Homeownership option: Applicability of other requirements.

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

- (1) Any provisions concerning the Section 8 owner or the HAP contract between the PHA and owner;
- (2) Any provisions concerning the assisted tenancy or the lease between the family and the owner;
- (3) Any provisions concerning PHA approval to lease a unit;
- (4) Any provisions concerning rent to owner or reasonable rent; and
- (5) Any provisions concerning the issuance or term of a certificate or voucher.

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

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

(2) Section 982.303 (~~Term of certificate or voucher~~);

(3) Section 982.305 (PHA approval of assisted tenancy ~~to lease~~);

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

(5) Section 982.307 (~~Owner screening of tenant~~ Tenants screening);

(6) Section 982.308 (~~Leases~~ 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 Sections § 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 ~~Unit too big or small~~);

(2) Section 982.404 (~~Responsibility for maintenance~~; Maintenance: Owner and family responsibility; PHA remedies during assisted occupancy); and

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

(e) Subpart J requirements. Except for § 982.455 (Automatic termination of HAP contract), ~~t~~The requirements of this part 982, subpart J (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451-454~~6~~) 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) (§§ 982.501-51~~7~~21) do not apply to assistance under the homeownership option:

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

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

(3) Section 982.517 (Utility allowance schedule).

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

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

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

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

Dated: _____

Harold Lucas, Assistant Secretary for
Public and Indian Housing

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1 ~~proceeds of any additional financing secured on the home.~~

2 (b) Securing the PHA's right of recapture. Upon purchase of the home,
3 a family receiving homeownership assistance shall execute such documentation
4 as required by HUD, and consistent with State and local law, that secures the
5 PHA's right to recapture the homeownership assistance in accordance with this
6 section. Any refinancing must be subordinate to the lien securing the
7 recapture of the homeownership subsidy.

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

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

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

14 (i) The costs of any capital expenditures;

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

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

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

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

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

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

28 (i) The costs of any capital expenditures;

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

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

1 refinancing.

2 (e) Use of sales price in determining recapture amount. The ~~lien~~
 3 ~~securing the homeownership subsidy~~ recapture amount shall be determined using
 4 ~~provide for the use of the actual sales price of the home for purposes of~~
 5 ~~determining the recapture amount~~, unless the sale is to an identity-of-
 6 interest entity. In the case of identity-of-interest transactions, the ~~lien~~
 7 ~~shall provide for the PHA to~~ shall establish a sales price based on fair
 8 market value.

9 (f) Automatic reduction of recapture amount. The ~~lien securing the~~
 10 ~~homeownership subsidy shall provide for automatic reduction of the lien amount~~
 11 ~~of homeownership assistance subject to recapture will automatically be reduced~~
 12 over a 10 year period, beginning one year from the purchase date, in annual
 13 increments of 10 percent. At the end of the 10 year period, the amount of
 14 ~~homeownership assistance subject to recapture the lien~~ will be zero.

15 ~~(g) Use of recaptured homeownership assistance. Any recapture of~~
 16 ~~homeownership assistance must be credited to the ACC Reserve Account, and may~~
 17 ~~be used to provide assistance under the Section 8 homeownership program.~~

18
 19 § 982.641 Homeownership option: Applicability of other requirements.

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

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

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

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

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

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

31 (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 certificate or voucher);
- (2) Section 982.303 (Term of certificate or voucher);
- (3) Section 982.305 (PHA approval to lease);
- (4) Section 982.306 (PHA disapproval of owner);
- (5) Section 982.307 (Owner screening of tenants);
- (6) Section 982.308 (Leases);
- (7) Section 982.309 (Term of 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); 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) Sections 982.353(b) (1), (2), and (3) (Where family can lease a unit); ~~and~~

~~(4) Section 982.354 (Administration by initial PHA under portability).~~

(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 (Unit too big or small);
- (2) Section 982.404 (Responsibility for maintenance during assisted occupancy); and
- (3) Section 982.405 (PHA periodic unit inspection).

(e) Subpart J requirements. The requirements of this part 982, subpart J (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451-457) 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) (§§ 982.501-517) do not apply to assistance under the homeownership option:

- (1) Section 982.504 (Maximum subsidy; FMR/exception rent limit);
- (2) Section 982.516 (Examination of family income and composition); and
- (3) Section 982.517 (Utility allowance).

(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).

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Harold Lucas, Assistant Secretary for
Public and Indian Housing

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1 suggested that the PHA should use the recaptured proceeds to assist other
 2 Section 8 families. Another commenter wrote that any recapture provision
 3 should be designed to limit the amount of equity that a participant may
 4 realize through the sale of a home under the Section 8 homeownership program.

5 HUD response. HUD agrees with the commenters that it is appropriate for
 6 HUD to recapture homeownership assistance ~~from the profits upon realized by~~
 7 ~~the family upon the sale or refinancing~~ of the home. Further, HUD agrees with
 8 ~~the commenters~~ that the recaptured assistance should be used to assist
 9 additional ~~Section 8 housing choice voucher assistance~~ families. HUD
 10 recognizes that the possibility of accumulating equity in the property and the
 11 realization of profit upon sale is an important facet of homeownership.
 12 However, HUD believes these benefits can be realized even if a portion of the
 13 assistance payments made on behalf of the family are retained by the PHA out
 14 of the net sales ~~profit/proceeds~~ of the property in order to further assist
 15 other needy families.

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

26 ~~In addition, a~~ New § 982.640 requires that, upon purchase of the home, a
 27 family receiving homeownership assistance shall execute such documentation as
 28 required by HUD, and consistent with State and local law, that secures the
 29 PHA's right to recapture the homeownership assistance. Any refinancing must
 30 be subordinate to the lien securing the ~~recapture of~~ homeownership subsidy.
 31 ~~Any recapture of homeownership assistance must be credited to the ACC Reserve~~

Account, and may be used to provide assistance under the Section 8 homeownership program.

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 will ~~may~~ recapture homeownership assistance provided to family ~~from the profits realized~~ 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

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

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

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

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

30 The final rule also retains the statutory provision that if the family
1 defaults on an FHA-insured mortgage, the PHA must terminate the Section 8

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

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

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

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

29 Section 8(y) provides for the mandatory termination of a family that
30 does not comply with HUD requirements to convey title and vacate the property
31 because the Federal government has a vested interest in protecting the FHA

insurance fund. HUD does not believe that it is appropriate to extend this mandatory termination policy in the case of non-FHA mortgages. There may be circumstances where the terms of the mortgage or the conditions for rapid possession and title conveyance to the lender are not reasonable. The PHA should have the discretion to ~~decide how to address these situations~~ ~~consider the circumstances in deciding whether to deny or terminate in such cases.~~

~~The final rule, however, clarifies that the PHA may deny or terminate continued voucher assistance if the family fails to comply with requirements for cooperation with the lender upon default on a non-FHA mortgage securing debt incurred to finance purchase of the home or any refinancing of that debt.~~

why is this out?

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

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

S. Administrative fees (§ 982.637)

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

HUD response. The final rule has not adopted these suggestions. Section 8(y) is intended to provide PHAs with added flexibility in serving the housing needs of their local communities within the existing framework and funding constraints of the Section 8 Housing Choice Voucher program. HUD does

1 not have any additional or separate funding to increase administrative fees
2 for PHAs that choose to exercise the homeownership option.

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

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

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

21 22 VI. 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 PHA does not issue the family a rental voucher or execute a housing
4 assistance payment contract with an owner of rental property on behalf of the
5 family participating in the homeownership option. Instead, the family and PHA
6 execute a statement of homeowner obligations. Under the homeownership option
7 the family provides the PHA with a copy of the contract of sale rather than
8 submitting a Request for Tenancy Approval and a copy of the proposed lease.
9 The homeownership option does require an independent pre-purchase inspection
10 in addition to the initial HQS inspection; however, this burden is off-set by
11 the removal of the requirement that the unit be subsequently inspected no less
12 than annually.

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

17 Environmental Impact

18 A Finding of No Significant Impact (FONSI) with respect to the
19 environment was made in accordance with HUD regulations in 24 CFR part 50 that
20 implement section 102(2)(C) of the National Environmental Policy Act of 1969
21 (42 U.S.C. 4223) at the proposed rule stage. That FONSI remains applicable to
22 this final rule and is available for public inspection between 7:30 a.m. and
23 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General
24 Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh
25 Street, SW, Washington, DC.

26 Unfunded Mandates Reform Act

27 Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-
28 1538) establishes requirements for Federal agencies to assess the effects of
29 their regulatory actions on State, local, and tribal governments and the
30 private sector. This final rule does not impose any Federal mandates on any
31 State, local, or tribal governments or the private sector within the meaning

1 of Unfunded Mandates Reform Act of 1995.

2 Executive Order 12866

3 The Office of Management and Budget (OMB) reviewed this final rule under
4 executive Order 12866, Regulatory Planning and Review. OMB determined that
5 this final rule is a "significant regulatory action," as defined in section
6 3(f) of the Order (although not economically significant, as provided in
7 section 3(f)(1) of the Order). Any changes made to the final rule subsequent
8 to its submission to OMB are identified in the docket file, which is available
9 for public inspection in the office of the Department's Rules Docket Clerk,
10 Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

11 Impact on Small Entities

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

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

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

31 Executive Order 13132, Federalism

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

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this final rule are ~~14.855-146, 14.147, 14.850, 14.851, 14.852, and 15.141.~~

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 purchased through the Section 8 homeownership option during the period the family is receiving voucher homeownership assistance (see part 982, subpart M of this title).

* * * *

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

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

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

4. Amend § 982.4 as follows:

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

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

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

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

§ 982.4 Definitions.

* * * *

(b) * * *

Cooperative. Housing owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular ~~apartment 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.

* * * *

1 Home. In the homeownership option: A ~~single-family~~ dwelling unit for
 2 which the PHA pays homeownership assistance. ~~The term "home" does not include~~
 3 ~~structures with more than a single dwelling unit. Accordingly, two, three~~
 4 ~~and four family homes are not included in the definition of the term "home."~~

5
 6 Homeowner. In the homeownership option: A family of which one or more
 7 members owns title to the home.

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

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

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

17 * * * * *

18 Interest in the home. In the homeownership option ~~(see~~
 19 ~~§ 982.632(b)(3))~~:

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

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

27 * * * * *

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

1 * * * * *

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

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

10 * * * * *

11
12 5. Add § 982.305(b) (4) to read as follows:

13
14 § 982.305 PHA approval to lease a unit.

15 * * * * *

16 (b) * * *

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

21 * * * * *

22
23 6. Add § 982.317 to read as follows:

24
25 § 982.317 Lease-purchase agreements.

26 (a) A family leasing a unit with assistance under the program may enter
27 into an agreement with an owner to purchase the unit. So long as the family
28 is receiving such rental assistance, all requirements applicable to families
29 otherwise leasing units under the tenant-based program apply. Any
30 homeownership premium (e.g., increment of value attributable to the value of
1 the lease-purchase right or agreement such as an extra monthly payment to

1 accumulate a downpayment or reduce the purchase price) included in the rent to
 2 the owner that would result in a higher subsidy amount than would otherwise be
 3 paid by the PHA must be absorbed by the family.

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

8
 9 7. Revise 982.352(a)(6) to read as follows:

10
 11 § 982.352 Eligible housing.

12 (a) * * *

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

15 * * * * *

16
 17 **Subpart M--Special Housing Types**

18
 19 8. Amend § 982.601 as follows:

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

21 b. Remove paragraph (d);

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

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

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

25
 26 § 982.601 Overview.

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

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

30 (2) Congregate housing;

31 (3) Group home;

- 1 (4) Shared housing;
2 (5) Manufactured home;
3 (6) Cooperative housing (excluding families that are not cooperative
4 members); and
5 (7) Homeownership option.

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

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

6 * * * *

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

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

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

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

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

designated as more than one special housing type.

* * * * *

9. Amend § 982.619 as follows:

a. Revise paragraph (a);

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

c. Add new paragraph (d).

§ 982.619 Cooperative housing.

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

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

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

* * * * *

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

(2) The PHA may not make any housing assistance payments if the contract unit does not meet the HQS, unless any defect is corrected within the period specified by the PHA and the PHA verifies the correction. If a defect

1 is life-threatening, the defect must be corrected within no more than 24
 2 hours. For other defects, the defect must be corrected within the period
 3 specified by the PHA.

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

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

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

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

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

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

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

22 * * * * *

23
 24 10. Add §§ 982.625 through 982.641 under a new undesignated heading
 25 "Homeownership Option" to read as follows:

26
 27 **Homeownership Option**

28 982.625 Homeownership option: General.
 29 982.626 Homeownership option: Initial requirements.
 30 982.627 Homeownership option: ~~How to qualify for homeownership assistance~~
 31 ~~Eligibility requirements for families.~~
 32 982.628 Homeownership option: Eligible units.
 33 982.629 Homeownership option: Additional PHA requirements for family
 34 search and purchase.
 35 982.630 Homeownership option: Homeownership counseling.

1 982.631 Homeownership option: Home inspections and contract of sale.
 2 982.632 Homeownership option: Financing purchase of home; affordability of
 3 purchase.
 4 982.633 Homeownership option: Continued assistance requirements; Family
 5 obligations.
 6 982.634 Homeownership option: Maximum term of homeownership assistance.
 7 982.635 Homeownership option: Amount and distribution of monthly
 8 homeownership assistance payment.
 9 982.636 Homeownership option: Portability.
 10 982.637 Homeownership option: Move with continued tenant-based assistance.
 11 982.638 Homeownership option: Denial or termination of assistance for
 12 family.
 13 982.639 Homeownership option: Administrative fees.
 14 982.640 Homeownership option: Recapture of homeownership assistance.
 15 982.641 Homeownership option: Applicability of other requirements.
 16
 17

18 § 982.625 Homeownership option: General.

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

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

23 (c) The PHA must approve a live-in aide if needed as a reasonable
 24 accommodation so that the program is readily accessible to and useable by
 25 persons with disabilities in accordance with 24 CFR part 8. (See § 982.316
 26 concerning occupancy by a live-in aide.)
 27

28 § 982.626 Homeownership option: Initial requirements.

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

32 (1) The family is qualified to receive homeownership assistance (see
 33 § 982.627);

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

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

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

39 ~~(4) The unit has been inspected by a PHA inspector and by an~~

1 ~~independent inspector designated by the family (see § 982.630).~~

2 ~~(5) The unit satisfies the HQS (see § 982.401 and § 982.630).~~

3 ~~(4) The family is any of the following:~~

4 ~~(i) A first time homeowner (defined at § 982.4);~~

5 ~~(ii) A cooperative member (defined at § 982.4);~~

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

10 ~~(iv) A family in circumstances described in the PHA administrative~~
 11 ~~plan, provided that the family is not a current homeowner.~~

12 ~~(5) No member of the family is a person who:~~

13 ~~(i) Has previously resided in a home with assistance under the~~
 14 ~~homeownership option, and~~

15 ~~(ii) Has been dispossessed from such home pursuant to a judgment or~~
 16 ~~order of foreclosure on any mortgage securing debt incurred to purchase the~~
 17 ~~home, or any refinancing of such debt.~~

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

21 ~~(7) In the case of assistance for a cooperative member, the cooperative~~
 22 ~~membership shares may be acquired at or before commencement of homeownership~~
 23 ~~assistance.~~

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

29 (c) Environmental requirements. The PHA is responsible for complying
 30 compliance with the authorities listed in 24-CFR § 58.6 of this chapter
 1 requiring the purchaser to obtain and maintain flood insurance for units in

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

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

8
 9 § 982.627 Homeownership option: Eligibility requirements for families How to
 10 qualify for homeownership assistance.

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

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

17 ~~(1) At admission to the voucher program, the family is eligible for~~
 18 ~~assistance (determined in accordance with § 982.201).~~

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

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

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

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

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

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

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

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

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

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

(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; or

(4) A family in other circumstances described in the PHA administrative plan.

*so child support + p.t. work = OK
welfare + p.t. work = OK.*

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

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at 24-CFR § 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.

need def.

(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:

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

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

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

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

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

13 (i) Is currently employed on a full-time basis; and
14 (ii) Has been continuously so employed during the year before
15 commencement of homeownership assistance for the family.

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

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

28 (e) Prohibition against mortgage defaults. The PHA shall not commence
29 homeownership assistance for a family if ~~the head of household or spouse any~~
30 ~~family member~~ has previously received assistance under the homeownership
31 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.

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

5 (b) ~~Suggested topics for t~~The PHA-required pre-assistance counseling
6 program ~~include should generally cover these subjects:~~

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

8 (2) Budgeting and money management;

9 (3) Credit counseling;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (2) The contract of sale must:

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

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

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

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

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

11
12 § 982.632 Homeownership option: Financing purchase of home; affordability of
13 purchase.

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

21 ~~(b) If purchase of the home is financed with FHA insured mortgage~~
22 ~~financing, such financing is subject to FHA mortgage insurance credit~~
23 ~~underwriting requirements.~~

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

27 (c) ~~The PHA may review lender qualifications and the loan terms before~~
28 ~~authorizing homeownership assistance.~~ The PHA may disapprove proposed
29 financing, refinancing or financing for improvements or repairs if the PHA
30 determines that the debt for purchase of the home is unaffordable, or if the
31 PHA determines that the lender or the loan terms do not meet PHA

1 qualifications. In making this determination, the PHA may take into account
 2 other family expenses, such as child care, unreimbursed medical expenses,
 3 homeownership expenses, and other family expenses as determined by the PHA.

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

6
 7 § 982.633 Homeownership option: Continued assistance requirements; Family
 8 obligations.

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

14 (b) Family obligations. The family must comply with the following
 15 obligations. ~~The PHA may terminate homeownership assistance for the family,~~
 16 ~~and may deny voucher rental assistance for the family, if the family violates~~
 17 ~~any of the following family obligations:~~

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

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

23 (3) Prohibition against conveyance or transfer of home. (i) So long as
 24 the family is receiving homeownership assistance, use and occupancy of the
 25 home is subject to § 982.551(h) and (i). ~~The family may not sell, convey or~~
 26 ~~transfer any interest in the home to any entity or person other than a member~~
 27 ~~of the assisted family residing in the home.~~

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

1 (iii) Upon death of a family member who holds, in whole or in part,

1 title to the home or ownership of cooperative membership shares for the home,
2 homeownership assistance may continue pending settlement of the decedent's
3 estate, notwithstanding transfer of title by operation of law to the
4 decedent's executor or legal representative, so long as the home is solely
5 occupied by remaining family members in accordance with § 982.551(h).

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

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

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

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

15 (C) The family's homeownership expenses.

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

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

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

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

29 (9) Other family obligations. The family must comply with the
30 obligations of a participant family described in § 982.551. However, the
31 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 an family that qualifies as an elderly or disabled family (see paragraph (c) of this section) ~~who is elderly or disabled at the start of homeownership assistance,~~ 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 ~~greater than~~ 20 years or longer; or

(2) Ten years, in all other cases. ~~if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or shorter, or~~

(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 may not establish a separate payment standard schedule for~~
3 ~~assistance under the homeownership option.~~ The PHA must use the same payment
4 standard schedule, payment standard amounts, and subsidy standards ~~on the PHA~~
5 ~~payment standard schedule established for rental assistance under the voucher~~
6 ~~program~~ pursuant to § 982.505 ~~for the homeownership option as for the rental~~
7 ~~voucher program.~~

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

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

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

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

17 (iii) Home insurance;

18 (iv) The PHA allowance for maintenance expenses;

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

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

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

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

1 (i) The cooperative charge under the cooperative occupancy agreement

1 including payment for real estate taxes and public assessments on the home;

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

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 debt incurred to finance major repairs,
10 replacements or improvements for the home.

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

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

17 (1) Directly to the family or;

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

21 (e) Automatic termination of homeownership assistance. Homeownership
22 assistance for a family terminates automatically ~~if, for a period of 180~~
23 ~~calendar days after the last housing assistance payment on behalf of the~~
24 ~~family, the family's total tenant payment continuously equals or exceeds the~~
25 ~~lower of homeownership expenses or the payment standard for the family.~~

26
27 § 982.636 Homeownership option: Portability.

28 (a) General. A family may qualify to move outside the initial PHA
29 jurisdiction with continued homeownership assistance under the voucher program
30 in accordance with this section. ~~portability procedures in § 982.353 and~~
31 ~~§ 982.355. However, § 982.354 is not applicable.~~

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

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

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

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

22
23 **§ 982.637 Homeownership option: Move with continued tenant-based assistance.**

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

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

1 interest in the prior home.

2 (b) Requirements for continuation of homeownership assistance. The
3 following requirements apply if a family that has received homeownership
4 assistance wants to move to a new unit with continued homeownership
5 assistance.

6 (1) The PHA must determine that all initial requirements listed in §
7 982.626 have been satisfied if a family that has received homeownership
8 assistance wants to move to a new unit with continued homeownership
9 assistance. However, the following requirements do not apply:

10 (1) The requirement for pre-assistance counseling (~~§ 982.626(b)(3) and~~
11 § 982.630) is not applicable. However, the PHA may require that the family
12 complete additional counseling (before or after moving to a new unit with
13 continued assistance under the homeownership option).

14 (2) The requirement that a family must be a first-time homeowner
15 (~~§ 982.625 and § 982.627~~) is not applicable.

16 (2) ~~The PHA may not commence homeownership assistance for occupancy of~~
17 ~~the new unit so long as any family member owns any title or other interest in~~
18 ~~the prior home.~~

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

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

26 (2) ~~Default on a mortgage.~~ If a family defaults on any mortgage on the
27 home (whether FHA insured or non-FHA), the PHA may not provide the family
28 continued homeownership assistance under the voucher program (see §
29 982.627(a)(4)). The PHA, in its discretion, may permit the family to move to
30 a new unit with continued tenant based rental assistance. However, the PHA
31 must deny such permission, if:

~~(i) The family defaulted on an FHA insured mortgage, and~~

~~(ii) The family fails to demonstrate that:~~

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

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

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

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

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

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

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

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

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

(2) The family fails to demonstrate that:

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

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

~~(c) The PHA may deny or terminate homeownership assistance if the family fails to comply with requirements for cooperation with the lender upon default on a mortgage securing debt incurred to finance purchase of the home, or any refinancing of such debt.~~

§ 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 the ~~full amount of~~ homeownership assistance provided to the family ~~upon the sale or refinancing of the home by the PHA.~~

~~(b) Definition of the term "profit." For purposes of paragraph (c) of this section, the term "profit" means the difference between the sales price and purchase price of the home, minus:~~

~~(i) The costs of any major repairs, replacements or improvements made by the family to the home; and~~

~~(ii) The costs incurred by the family in the sale of the home (such as closing costs).~~

~~(c) Recapture amount.~~ In calculating the recapture amount, the PHA must use the actual sales price of the home, unless the sale is to an identity of interest entity. In the case of identity of interest transactions, the PHA shall establish the sales price based on market value.

~~(e) Timing of recapture.~~ The PHA may recapture the homeownership assistance from the profit realized upon the sale of the home, or from the

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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

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 ①
 7 financing approach. *let's repeat it here*

8 The preamble to the April 30, 1999 proposed rule provides additional
 9 details regarding the amendments to 24 CFR part 982, subpart M.

10 11 **II. Summary of Changes Made by this Final Rule to the April 30, 1999 Proposed** 12 **Rule**

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

17 1. Revised definition of "net family assets" (§ 5.603(d)). In response
 18 to public comment, this final rule revises the definition of "net family
 19 assets" located in 24 CFR 5.603(d) to exclude the value of a home purchased
 20 through the homeownership option during the period the family is receiving
 21 Section 8 homeownership assistance.

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

30 3. Revised definition of the term "cooperative" (§ 982.4(b)). In
 1 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 ~~currently owns~~ 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 ~~is not eligible to receive Section 8 homeownership assistance.~~ 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. Revised definition of the term "home" (§ 982.4). This final rule revises the definition of the term "home" to clarify that the family may not use Section 8 homeownership assistance to purchase a structure with more than one unit (e.g., two or three family homes).~~

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. Reorganization of eligibility requirements (§§ 982.626, 982.627, and 982.628). For purposes of clarity, this final rule reorganizes the eligibility requirements for participation in the homeownership option located in proposed §§ 982.626 and 982.627). Section 982.626 of the final rule describes the initial requirements that must be satisfied before the commencement of homeownership assistance. Section 982.627 sets forth the eligibility requirements (such as the minimum income and employment

① why is this out?

requirements) for a families wishing to participate in the homeownership option. Section 982.628 of the final rule describes the eligibility requirements for homes purchased with homeownership assistance. With the exception of those changes described elsewhere in this preamble, this reorganization is not substantive, but is intended to clarify these regulatory requirements. The substance of proposed § 982.628 and subsequent regulatory sections have been redesignated to conform to the establishment of new § 982.628 (for example, proposed § 982.628 has become § 982.629 of this final rule, proposed § 982.630 has become § 982.631, etc.).

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

8. Families eligible for homeownership assistance (§ 982.627(b)(4)). The final rule provides that the PHA may make homeownership assistance available to families other than those types identified in § 982.627(b)(1)-(3) (i.e., first-time homeowners; cooperative members; and family members with disabilities requiring homeownership assistance as a reasonable accommodation). The PHA must describe in the PHA administrative plan the circumstances of families who do not fall under one of the categories listed in § 982.627(b)(1)-(3), but who the PHA has determined to make eligible for homeownership assistance.

like who?
Where is the authority for this?

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. Compliance with environmental requirements (§ 982.626). The final

rule revises § 982.626 to clarify that the PHA is responsible for requiring compliance with the environmental authorities listed in 24 CFR 58.6 (but is not responsible for actual compliance with the environmental requirements).

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 under at the Federal minimum wage.

11. Fulfilling the minimum income requirement (§ 982.627(c)(1)). In

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

12. Fulfilling the employment requirement (§ 982.627(d)(1)). The final

rule provides that one or more adult members of the family who will own the home at commencement of homeownership assistance (not just the head of household or spouse) may fulfill the employment requirement

13. Interruptions in employment (§ 982.627(d)(2)). The final rule

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

14. Eligible homes for purchase under the homeownership option

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

15. Provision of homeownership counseling (§ 982.630(b)). The final

rule clarifies that, although the PHA must require pre-assistance homeownership counseling, the PHA is not itself obligated to provide the

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1 required counseling.

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

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

9 18. RESPA and predatory lending as suggested counseling topics
10 (§ 982.630(b)(9)). The final rule expands the list of suggested housing
11 counseling topics to include information about the Real Estate Settlement
12 Procedures Act (12 U.S.C.2601 et seq.) (RESPA), state and Federal truth-in-
13 lending laws, and how to identify and avoid loans with oppressive terms and
14 conditions. used

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

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

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

are there any requirements

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

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

① Since PHA must establish lender qualifications at PHA

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

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

26. Maximum term of homeownership assistance (§ 982.634). The final rule provides for a mandatory term limit on homeownership assistance of 15 to 20 years if the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer or shorter. In all other cases, the maximum term of homeownership assistance is 10 years. If the mortgage term is longer

② why did this change?
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20 = 10

1 ~~than 20 years, the maximum term of homeownership assistance is 15 years.~~ The
 2 PHA may not establish shorter ~~or longer~~ maximum terms.

3 27. Applicability of maximum term for homeownership assistance
 4 (§ 982.634). The final rule clarifies that the maximum term for homeownership
 5 assistance applies to any member of the household who has an ownership
 6 interest in the unit during any time that homeownership payments are made, or
 7 is the spouse of any member of the household who has an ownership interest in
 8 the unit at the time homeownership payments are made.

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

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

22 28. Inclusion of accessibility modifications as homeownership expenses
 23 (§ 982.635(c)(2)(vii)). The final rule clarifies that, if a member of the
 24 family is a person with disabilities, eligible homeownership expenses may
 25 include debt incurred to finance costs needed to make the home accessible for
 26 the family member, if the PHA determines that the allowance is needed as a
 27 reasonable accommodation.

28 29. Inclusion of condominium or cooperative operating charges or
 29 maintenance fees as homeownership expenses (§ 982.635(c)(4)). The final rule
 30 provides that, if the home is a cooperative or condominium unit, homeownership
 1 expenses may include cooperative or condominium ~~occupancy~~ operating charges or

1 maintenance fees assessed by the condominium or cooperative homeowner
2 association.

3 30. Homeownership assistance payments to lender or family
4 (§ 982.635(d)(2)). The final rule clarifies that, if the PHA decides to make
5 the homeownership assistance payments directly to the lender, and the
6 assistance payment exceeds the amount due to the lender, the PHA must pay the
7 excess amount directly to the family.

8 31. Automatic termination of homeownership expenses assistance (§
9 982.635(e)). The final rule clarifies that homeownership assistance for a
10 family terminates automatically ~~if, for a period of~~ 180 calendar days after
11 the last housing assistance payment on behalf of the family, ~~the family's~~
12 ~~total tenant payment continuously equals or exceeds the lower of homeownership~~
13 ~~expenses, or the payment standard for the family~~. This requirement is also
14 applicable to tenant-based rental assistance.

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

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

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1 34. Denial or tTermination of homeownership assistance (§ 982.638).

2 For purposes of clarity, the final rule ~~relocates~~ consolidates the provisions
 3 regarding the denial and termination of homeownership assistance in a new §
 4 982.638. ~~The proposed rule had provided these requirements in paragraph (b)~~
 5 ~~of proposed § 982.636.~~ ~~The final rule also clarifies that the PHA may deny or~~
 6 ~~terminate homeownership assistance if the family fails to comply with~~
 7 ~~requirements for cooperation with the lender upon default on a mortgage~~
 8 ~~securing debt incurred to finance purchase of the home, or any refinancing of~~
 9 ~~such debt.~~

10 35. Continued assistance after mortgage defaults (§ 982.638(d)). This
 11 final rule ~~revises~~ clarifies the regulatory provisions regarding continued
 12 assistance to a family that has defaulted on a mortgage obtained through the
 13 homeownership option. The final rule provides that, ~~if a family defaults on~~
 14 ~~any mortgage on the home (whether FHA insured or non-FHA),~~ the PHA must
 15 terminate 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 ~~deny the family continued~~
 19 ~~homeownership assistance under the voucher program.~~ However, the family may
 20 be eligible to receive continued voucher rental assistance, ~~as provided in §~~
 21 982.636(e)(2).

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22 36. Recapture of homeownership assistance (§ 982.640). In response to
 23 public comment, the final rule provides ~~that the PHA shall~~ for the recapture
 24 of homeownership assistance provided to the family upon the sale or
 25 refinancing of the home. ~~The PHA may recapture the homeownership assistance~~
 26 ~~from the profits realized upon the sale of the home, or from the proceeds of~~
 27 ~~any additional financing secured on the home.~~ Sales proceeds that are used
 28 by the family to purchase a new home with Section 8 homeownership assistance
 29 are not subject to recapture. Further, a family may refinance to take
 30 advantage of lower interest rates, or better mortgage terms, without any
 31 recapture penalty. Only those proceeds realized upon refinancing that are

1 retained by the family (for example during a "cash-out" of the refinanced
2 debt) are subject to the new recapture provision.

3 In addition, ~~the~~ The final rule requires that, upon purchase of the home, a
4 family receiving homeownership assistance shall execute such documentation as
5 required by HUD, and consistent with State and local law, that secures the
6 PHA's right to recapture the homeownership assistance. Any refinancing must
7 be subordinate to the lien securing the recapture of homeownership subsidy.

8 The amount of homeownership assistance subject to recapture shall
9 automatically be reduced over a 10 year period, beginning one year from the
10 purchase date, in annual increments of 10 percent. At the end of the 10 year
11 period, the amount of the homeownership assistance subject to recapture will
12 be zero. ~~Any recapture of homeownership assistance must be credited to the~~
13 ~~Annual Contributions Contract (ACC) Reserve Account, and may be used to~~
14 ~~provide assistance under the Section 8 homeownership program.~~

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

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

26 Section IV. of the preamble discusses general comments that did not
27 address a specific regulatory section. Section V. of the preamble discusses
28 those comments that concerned a specific regulatory provision of the proposed
29 rule.

31 IV. Discussion of General Comments Not Regarding a Specific Regulatory

1 **Section**

2 **A. Support for Proposed Rule**

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

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

17 **B. General Concerns About the Proposed Rule**

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

31 HUD response. Section 8(y) provides that a PHA, in its discretion, may

1 make Section 8 homeownership assistance available to eligible families. HUD
2 anticipates that PHAs will consider local circumstances (such as the
3 availability of other local resources) when deciding whether or not to
4 implement a homeownership program.

5 HUD does not believe it is necessary to establish upper limits on the
6 number of families a PHA may allow to participate in the homeownership option
7 in order to protect the interests of extremely low-income families. Since the
8 same income targeting requirements apply to the rental and homeownership
9 components of the Section 8 Housing Choice Voucher program, implementation of
10 the homeownership option should not have a significant effect on the
11 availability of Section 8 voucher assistance to extremely low-income
12 applicants. ~~Due to the strict statutory income targets for extremely~~
13 ~~low-income families that govern admission to the Housing Choice Voucher~~
14 ~~program, HUD anticipates that most participants in the Section 8 homeownership~~
15 ~~program will be drawn from families currently participating in the tenant-~~
16 ~~based rental program, not new admissions.~~

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

30 HUD response. The final rule continues to provide PHAs with broad
31 administrative flexibility over the homeownership option, while establishing

1 ~~Federal standards for minimum income and term of assistance. Where HUD has~~
2 ~~determined that uniformity is appropriate (such as in the areas of minimum~~
3 ~~income and maximum term of assistance), this final rule establishes uniform~~
4 ~~Federal standards. However, HUD continues to believe that administrative~~
5 ~~flexibility is essential for the program to address local needs, adapt to~~
6 ~~local markets, and permit localized financing strategies in order to achieve~~
7 ~~success in individual communities. The approach of the final rule is~~
8 ~~consistent with two of the purposes of the Public Housing Reform Act: to~~
9 ~~deregulate PHAs, and to provide more flexible use of Federal assistance to~~
10 ~~PHAs (see section 505(b) of the Public Housing Reform Act). Allowing for~~
11 ~~administrative flexibility will ultimately provide far greater housing~~
12 ~~opportunities and economic mobility for participating families than a rigid,~~
13 ~~one-size-fits-all program structure.~~

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

22 C. Comments Regarding Persons with Disabilities

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

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

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

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

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

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

30 HUD response. The provision of homeownership assistance as a reasonable
31 accommodation is determined on a case-by-case basis by the PHA. The PHA will

determine what is reasonable based on the specific circumstances and individual needs of the ~~elderly person or~~ 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

1 help ensure that families are exposed to housing choices in a range of
2 neighborhoods. The commenters wrote that there is much to be gained by
3 requiring, or at least strongly encouraging, PHAs to partner with nonprofits
4 in the design and operation of Section 8 homeownership programs.

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

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

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

1 may consider subcontracting with a nonprofit organization to administer the
2 homeownership program on behalf of the PHA, but is not required to do so.

3 E. Comments Regarding Income Targeting

4 Comment: The final rule should clarify whether Section 8 homeownership
5 subsidies are subject to the same income targeting requirements as the Section
6 8 rental assistance program. A few commenters wrote that if the new income
7 targeting requirements of the Public Housing Reform Act apply, the
8 requirements will reduce the pool of families eligible for Section 8
9 homeownership assistance.

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

17 HUD anticipates that most participants in the Section 8 homeownership
18 program will be current program participants, not applicants. Since families
19 continuing to receive assistance under the 1937 Act are not considered as new
20 admissions, their income levels are not examined for compliance with income
21 targeting requirements. ~~Therefore, HUD anticipates that the income targeting~~
22 ~~requirements will have minimal impact on the implementation of the Section 8~~
23 ~~homeownership program.~~

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

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

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

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

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

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

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

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

17 H. Comments Regarding Mortgage Defaults

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

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

27 I. Other General Comments

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

31 The PHA may choose to make homeownership assistance freely available for
32 any qualified applicant or participant, or to restrict homeownership

1 assistance to families or purposes defined by the agency. (64 FR 23488)

2
3 One commenter wrote that the proposed regulatory text does not contain
4 comparable language. The commenter wrote that a PHA should have the
5 discretion to limit application of its Section 8 homeownership program, in
6 whole or in part, to achieve local housing goals or priorities. Accordingly,
7 the commenter suggested that the final rule contain regulatory text equivalent
8 to the quoted preamble language.

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

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

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

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

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

32 Comment: HUD should isolate Section 8 homeownership loans from other

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

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

J. General Questions About the Proposed Rule

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

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

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

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

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

HUD response. In response to this comment, HUD has revised the definition of "net family assets" found in 24 CFR 5.603(d). ~~As revised by this final rule, the~~ revised definition excludes the value of a home purchased through the homeownership option for purposes of determining the family's annual income under 24 CFR 5.609 ~~during the period the family is~~

1 receiving Section 8 homeownership assistance.

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

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

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

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

16 17 V. Discussion of Comments Regarding a Specific Regulatory Section

18 For the convenience of readers, the discussion that follows is organized
19 by the regulatory section of the proposed rule it pertains to (e.g.,
20 § 982.625, § 982.633, etc.).

21 A. Definitions (§ 982.4)

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

29 HUD Response. The final rule addresses the concerns raised by the
30 commenters regarding the clarity of the definition of "public assistance."
31 Specifically, HUD has removed the definition of the term "public assistance"

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1 and adopted, in its place, the definition of the term "welfare assistance"
2 located in 24 CFR 5.603. The definition of "welfare assistance" is well-
3 established and understood by PHAs. Further, the use of the term "welfare
4 assistance" in this final rule will help to ensure the consistent use of
5 defined terms throughout HUD's regulations.

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

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

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

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

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

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

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

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

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

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

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

1 C. Cooperative housing (§ 982.619).

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

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

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

23 HUD response. This comment, which appears to relate only to Section 8
24 rental assistance, is outside the scope of this rulemaking, which implements
25 the "homeownership option" authorized by section 8(y) of the 1937 Act. HUD
26 notes, however, that the final rule provides that the costs of purchasing a
27 cooperative unit may be included as a "homeownership expense" for purposes of
28 determining the amount of monthly homeownership assistance payment (see §
29 982.634(c)(4)).

30 D. Homeownership option: General (§ 982.625)

31 Comment: Newly constructed homes or units under construction should be

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

10 HUD response. In response to these comments, HUD has revised proposed §
11 982.625, which described the "existing home" requirement. Section
12 982.628(a)(2) of this final rule provides that a home may be purchased under
13 the homeownership option if, at the time the PHA determines that the family is
14 eligible for Section 8 homeownership assistance, the home is either under
15 construction or already existing. However, before commencing homeownership
16 assistance for the family, the PHA must determine that the home satisfies all
17 of the applicable requirements described in § 982.628 (for example, the home
18 must have been inspected by a PHA inspector and by an independent inspector
19 designated by the family; and the home must meet the HUD Housing Quality
20 Standards (HQS)).

21 ~~HUD believes there may be some misunderstanding surrounding this~~
22 ~~provision. The home to be purchased is considered "existing housing" if the~~
23 ~~home meets Housing Quality Standards (HQS) when the family purchases the home.~~
24 ~~Newly constructed homes are eligible for assistance under the Section 8~~
25 ~~homeownership program if the construction is finished when the family~~
26 ~~completes the purchase transaction. On the other hand, units that are under~~
27 ~~construction are not eligible for section 8 assistance until the time the unit~~
28 ~~meets the HQS requirements of the Section 8 Housing Choice Voucher program.~~

29 Comment: The homeownership option should be available only to current
30 recipients of Section 8 rental assistance who have successfully complied with
31 all rental program requirements for at least one year. One commenter

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1 suggested that homeownership assistance should not be made available at
2 initial admission. According to the commenter, this will facilitate proper
3 counseling and a considered housing search without imposing artificial
4 deadlines.

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

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

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

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

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

30 HUD response. HUD has carefully considered all of the suggested
31 exemptions to the first-time homebuyer requirement and is sympathetic to the

1 circumstances of families in many of the suggested categories. However, HUD
2 has decided not to attempt to specify, by regulation, the many possible
3 situations that may merit an exception to the first-time homebuyer
4 requirement. Instead, the final rule provides that the PHA may describe in
5 the PHA administrative plan any special hardship cases or the circumstances of
6 families who do not meet the definition of a first-time homeowner, but who the
7 PHA has determined should be eligible for participation in the PHA
8 homeownership program.

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

19 In addition, HUD has further revised this definition of ~~first-time~~
20 ~~homeowner~~ to clarify that any family who ~~currently owns~~ has owned any
21 residential property during the preceding three years (regardless of whether
22 it is the family's principal dwelling unit or not) does not qualify as a
23 ~~first-time homeowner, is not eligible to receive Section 8 homeownership~~
24 ~~assistance. HUD does not believe it is an appropriate use of limited Section~~
25 ~~8 resources to assist families who currently own residential property to~~
26 ~~purchase another residential unit.~~

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

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

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

E. Initial requirements (§ 982.626)

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

HUD response. Homeownership assistance is provided to assist a family with the monthly homeownership expenses of its residence. Homeownership assistance may not be used to assist the family with the monthly expenses for investment or rental property. ~~Therefore, the family may not use Section 8 homeownership assistance to purchase two- or three-family homes. The final rule revises the definition of the term "home" at § 982.4 to clarify this issue.~~ Accordingly, § 982.628 of this final rule clarifies that a home

1 purchased with homeownership assistance must either be a one unit property or
2 a single dwelling unit in a cooperative or condominium.

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

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

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

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

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

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

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

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

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

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

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

31 Other commenters wrote that the final rule should restrict the PHA from

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

6 HUD response. HUD agrees that the regulation should establish a
 7 national standard for the minimum income requirements. As suggested by
 8 several of the commenters, HUD has decided to establish a national minimum
 9 income requirement that is equal to 2,000 hours of yearly full-time work under
 10 the Federal minimum wage. HUD believes that this standard is administratively
 11 straight-forward, and addresses the statutory employment requirement without
 12 arbitrarily eliminating working families that are making no more than the
 13 minimum wage. *as long as they work F/T*

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

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

31 Comment: Requiring the "head of household or spouse" to meet minimum

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

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

need income def.

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

28 HUD Response. Section 8(y) does not provide for an exemption from the
29 minimum income requirement for elderly or disabled families, other than the
30 source of income used to determine if the family meets the requirement. The
31 purpose of the minimum income requirement is to ensure that the family has

1 sufficient income available to absorb the additional expenses associated with
2 homeownership, not to ensure that the family meets the employment requirement.

3 H. Family Employment (§ 982.627(c))

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

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

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

29 HUD response. HUD agrees that the employment requirement should allow
30 for small breaks in service to be taken into consideration. The final rule
31 provides that the PHA has discretion to determine whether (and to what extent)

1 a brief interruption is considered permissible. The final rule also clarifies
2 that the PHA may count successive employment during the year and consider
3 self-employment in a business.

4 Comment: Requiring the "head of household or spouse" to meet employment
5 requirement fails to acknowledge the varied structure of some families.

6 Several commenters wrote that requiring the head of household or spouse to
7 meet the employment requirements will disqualify many non-traditional
8 families. In some extended families the head of household may be unemployed,
9 but there may an adult child who is employed and providing the income upon
10 which the family could qualify for financing. One commenter suggested that
11 the final rule should simply require that an adult member of the household be
12 gainfully employed.

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

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

28 HUD response. The final rule does not extend the minimum employment
29 term. HUD believes one year of substantially continuous employment is an
30 acceptable minimum threshold and a realistic gauge of the likelihood of
31 continued employment in the future. However, the lender will apply its own

1 underwriting criteria, which may include an employment requirement that is
2 more stringent than the standard adopted by the final rule. The PHA could
3 also choose to lengthen employment time by adopting additional eligibility
4 criteria in accordance with § 982.626(b) of this final rule.

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

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

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

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

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

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

30 HUD response. HUD agrees with the comment that permitting applicants to
31 participate in the homeownership option will present PHAs with several

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

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

23 HUD response. Neither the April 30, 1999 proposed nor this final rule
24 place a two month limitation on the family's search for a home. Section
25 982.303 (term of voucher) is not applicable to the homeownership option (see §
26 982.641(b)). HUD has not adopted the suggestions to establish a minimum term
27 for family search and purchase. HUD believes this decision is properly left
28 to the administrative discretion of the PHA, as the housing market will vary
29 from community to community.

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

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

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

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

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

22 K. Homeownership counseling (\$ 982.629)

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

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

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

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

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

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

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

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

27 HUD response. The final rule clarifies that the PHA-required counseling
28 program should "generally" cover the topics listed in § 982.630. The final
29 rule also provides that the PHA may adapt the housing counseling topics to
30 local circumstances and the needs of individual families.

31 Comment: Counseling programs should include information on fair housing

Why not mandatory?

1 and fair housing lending practices, as well as referrals to local fair housing
2 enforcement agencies. One commenter made this suggestion.

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

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

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

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

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

1 inspection by an independent professional, which is clearly separate and
2 distinct from the statutory HQS inspection.

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

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

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

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

31 HUD response. HUD has not provided PHAs with the discretion to relax or

1 modify the inspection requirements for newly constructed homes. HUD does not
2 believe that the inspection requirement will prove problematic for new homes.
3 The unit must initially meet the HQS and there is no automatic guarantee
4 against poor construction or other types of problems, regardless of the date
5 of completion of a particular unit.

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

13 HUD response. The statute explicitly provides that the annual HQS
14 inspection is not required for section 8(y) units. While the final rule does
15 not require the PHA to conduct subsequent inspections of the unit, the final
16 rule clarifies that the additional requirements for continuation of
17 homeownership assistance established by the PHA may include additional unit
18 inspections while the family is receiving homeownership assistance (see
19 § 982.633(b)(7)).

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

24 HUD response. The independent home inspection is supposed to be
25 independent of, not only the seller, but also the PHA. The HQS inspection,
26 conducted prior to the time the family enters into a contract of sale and
27 contracts for the independent inspection, and the pre-assistance counseling
28 program should reduce the likelihood of the family having to incur the cost of
29 the inspection for numerous units. ~~In those cases where the family cannot~~
30 ~~afford the cost of the home inspection, it is questionable as to how the~~
31 ~~family could be expected to handle on-going homeownership expenses, and is an~~

~~indication the family is probably not in a position to become a homeowner at this point in time.~~

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

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

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

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

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

HUD response. (After carefully considering the comments submitted on

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why just here?

Cliff
Sarah

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

12 While HUD agrees that loans with features like balloon payments are
13 potential problems for low-income purchasers borrowers, and each PHA should
14 analyze whether to prohibit the use of this type of financing, there may be
15 certain circumstances and localities where the use of such features balloon
16 payments is appropriate. PHAs should consider analyzing each loan (including
17 refinancing or financing for improvements or repairs) before providing
18 assistance to determine whether the lender and the loan meet its
19 qualifications. PHAs should be particularly careful of loans with the
20 following features: loans in which financing costs represent a high percentage
21 of the total loan amount; loans that include high credit insurance premiums;
22 balloon payments that the borrower will be unable to repay; interest rates
23 (including variable rates) significantly higher than conventional mortgages;
24 pre-payment penalties, especially penalties that extend over long terms; high
25 ratios of family debt to income; and loans based on unverified sources of
26 income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 The final rule provides for a mandatory term limit on homeownership
19 assistance of ~~10~~ 15 years if the initial mortgage incurred to finance purchase
20 of the home has a term that is ~~longer than 20 years or longer or shorter. In~~
21 ~~all other cases, the maximum term of homeownership assistance is 10 years.~~
22 ~~If the mortgage term is longer than 20 years, the maximum term of~~
23 ~~homeownership assistance is 15 years.~~ HUD believes that a family ~~should be~~
24 ~~able that is unable~~ to assume the full responsibility for monthly
25 homeownership expenses at the end of such time ~~is probably not an appropriate~~
26 ~~candidate for the homeownership option.~~ HUD also believes that the maximum
27 term established by this final rule is sufficient to achieve broad lender
28 participation.

29 HUD understands the concerns raised by some of the commenters regarding
30 Section 8 homeowners who, due to circumstances beyond their control, are
31 unable to assume full responsibility for the monthly homeownership expenses at

1 the end of the maximum term. HUD encourages PHAs and families to
 2 realistically assess the family's economic situation ~~within~~ a year or so
 3 before the conclusion of the maximum term of the homeownership assistance.
 4 The family would then be in a position to decide whether it might be in the
 5 family's best interest to sell the property and revert to Section 8 rental
 6 assistance.

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

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

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

28 Comment: Does the maximum term requirement mean that no person in the
 29 family may have received more than ten years assistance? One commenter asked
 30 whether the daughter of a head of household who has resided in a home
 31 purchased under the homeownership option for ten years would be prohibited

1 from applying for assistance to purchase her own home. The commenter
2 recommended that the final rule clarify that the maximum term applies only to
3 those family members who obtained an ownership interest through the program.

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

9 P. Amount and distribution of monthly homeownership assistance payment
10 (\$ 982.634)

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

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

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

1 the program.

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

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

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

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

27 HUD comment. This final rule continues to provide that the PHA may make
28 the homeownership assistance payment either directly to the family or to a
29 lender on behalf of the family. The PHA may determine it is necessary to make
30 housing assistance payments directly to the family in order to secure lender
31 participation, thereby avoiding the possibility that both the PHA and the

1 family will be sending checks to the lender for the mortgage payment. On the
2 other hand, some lenders may indicate their participation is contingent on
3 receiving the payment directly from the PHA.

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

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

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

14 Comment: PHAs should be permitted to set a separate payment standard
15 for the homeownership program. Several commenters wrote that PHAs should have
16 the latitude to set a separate payment standard for the homeownership option.
17 For example, a payment standard of 95% of the Fair Market Rent (FMR) might
18 work for the rental market, but for the for-sale market a payment standard of
19 105% might be more appropriate. Another commenter wrote that, if the unit
20 selected by the participating family is new, the PHA should have the latitude
21 to adjust the payment standard to account for the superiority of the housing
22 unit.

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

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

1 HUD response. ~~Both the proposed and The~~ final rules lists the items
2 that comprise the monthly homeownership expenses at § 982.635(c).

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

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

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

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

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

31 HUD response. Water and sewer fees were already covered in the proposed

rule under the PHA utility allowance for the home. The final rule has been amended to provide that if the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium ~~occupancy~~ operating charges or maintenance fees charges, or charges assessed by the condominium or cooperative homeowner association.

Comment: HUD should develop a uniform rule for allowances of homeownership expenses. The proposed rule would allow PHAs to adopt policies for determining the amount of homeownership expenses in determining the family's Section 8 subsidy amount. Several commenters stated that giving discretion to PHAs to exclude any of these amounts as expenses would create great inequities across jurisdiction lines. The commenters suggested that HUD adopt a uniform rule regarding homeownership expenses. One of the commenters recommended that all of the ~~listed~~ items ~~listed in proposed § 982.634(e)~~ be considered homeownership expenses.

HUD response. The proposed rule and the final rule do not provide the PHA with the discretion to exclude any of the ~~listed~~ homeownership expenses ~~listed in § 982.634(e)~~ or to add any additional items. The PHA is responsible for determining the appropriate allowance amount provided for maintenance expenses; major repairs and replacements; and utilities (which is the same utility allowance amount that applies to the voucher program as a whole). HUD believes it is appropriate for the PHA to determine the allowance amounts provided for the homeownership expenses, since a realistic projection of these average costs will vary from jurisdiction to jurisdiction.

Q. Portability (§ 982.635)

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

One commenter suggested that if a person with a disability finds a home outside the jurisdiction of the initial PHA, the initial PHA should be

of the ~~same~~ eligibility
type?

1 permitted to continue to administer the program where the receiving PHA will
2 not provide homeownership assistance. The commenter wrote that the final rule
3 could also require the receiving PHA to provide homeownership assistance to
4 the person with the disability.

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

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

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

30 HUD response. HUD has not adopted this comment. The PHA area of
31 operation is determined by state law, and the language of Section 8(y) does

1 not provide a statutory basis for overriding state law with respect to PHA
2 administration of the homeownership option.

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

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

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

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

26 Comment: The final rule should provide for the recapture of
27 homeownership assistance upon the sale or transfer of the home. Several
28 commenters made this suggestion. There was no consensus among these
29 commenters as to the extent of the recapture. Two of the commenters suggested
30 that recaptures should only apply to half of the homeownership assistance
31 payments made to or on behalf of the family. One of these commenters also


Andrea E. Jacobson

06/28/2000 09:28:44 AM

Record Type: Record

To: Francis S. Redburn/OMB/EOP@EOP, Margy Waller/OPD/EOP@EOP
cc: Joseph F. Lackey Jr./OMB/EOP@EOP, James F. Jordan/OMB/EOP@EOP
Subject: ONE STRIKE RULE AND SECTION 8 HOMEOWNERSHIP

Camille answers Margy's question below. (see blue)

----- Forwarded by Andrea E. Jacobson/OMB/EOP on 06/28/2000 09:37 AM -----



"Camille E. Acevedo" <Camille_E._Acevedo@HUD.GOV>
06/28/2000 09:10:11 AM

Record Type: Record

To: Joseph F. Lackey Jr./OMB/EOP, Andrea E. Jacobson/OMB/EOP, James F. Jordan/OMB/EOP
cc: Ariel Pereira <Ariel_Pereira@HUD.GOV>
Subject: ONE STRIKE RULE AND SECTION 8 HOMEOWNERSHIP

Joe, Andrea, Jim,

Good morning. I wanted to get back to you on a couple of things regarding the One Strike and Section 8 Homeownership rules.

ONE STRIKE. I wanted to let you know that the One Strike Rule was delivered to ONDCP yesterday morning. Last summer at the proposed rule stage, our contact was John Carnevale, Director of the Office of Programs, Budget and Evaluation. Mr. Carnevale left in January and our contact is now Norman Deck, who is the Acting Director of the Office of Programs, Budget and Evaluation. The number for that office is 395-6752. Again, DOJ has had this rule since May 18th and our contact there is Frank Campbell in the Office of Policy at 554-2283.

SECTION 8 HOMEOWNERSHIP RULE. Regarding the question of HUD's statutory authority to designate which families will be eligible for the Section 8 Homeownership Program. Section 8(y) of the 1937 Act provides in Section 8(y)(7) the following:

"(7) Definition of First-Time Homeowner. -- For purposes of this subsection, the term 'first time homeowner' means --

(A) A family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives assistance for homeownership under this subsection; and

(B) Any other family, as the Secretary may prescribe."

Ariel is back from leave and is assigned to this rule. He is working with PIH on compiling responses to the issues raised by OMB and DPC and he is happy to address (or try) any other questions or comments you may have.

As you have heard, I believe, unfortunately Sally Watts is no longer at HUD (she is now at OTS). I am happy to address issues on the One Strike rule.

Camille

R 1776- Sec. 8 use for DP- what does it require from own funds?
SAP for HR 1776?

Section 8 Homeownership Final Rule DPC Questions

Eligibility Criteria for Families

p. 5, l. 21

Who are the groups, other than first-time homeowners, cooperative members, and families with disabilities, that you anticipate will be eligible for homeownership assistance through exercise of the PHAs' discretion? Are there any limits on this discretion? Does the legislation give HUD the authority to grant this discretion/expansion?

p. 5, l. 16

How does the statute give authority for HUD to extend homeownership assistance to families with disabilities, even if they are not first-time homebuyers, or acquiring shares in a cooperative?

p. 81

While the statutory language clearly indicates that families who purchase shares in a coop qualify for the homeownership assistance, without being first-time purchasers, can you explain to us the policy reason behind giving special attention to coops?

p. 30

Does the first-time homeowner requirement accommodate a woman who initially owns a home with her spouse, but later is living in the home by herself, and having to cover the homeownership costs?

Income and Employment Requirements for Eligibility

p. 3., l. 24; p. 6, l. 4; p. 81, l. 18

What constitutes income and how is "welfare assistance," as defined in 24 CFR 5.603 interpreted? Is there a common understanding of whether welfare includes: TANF assistance, TANF non-assistance, child care subsidies, EITC, food stamps, Medicaid, SCHIP, earned income disregards etc? Has HHS reviewed this change in the rule?

Would a woman engaged in part-time work, but receiving child support be treated differently from a woman engaged in part-time work who receives welfare because the child-support obligor does not pay? Who were the commenters on this section?

p. 25; p. 82, l. 13

Why allow the income requirement to be met by aggregating the contributions of adults in the family, but not allow aggregate consideration of the family for the purpose of meeting the employment requirement?

p. 34 - 35

Explain the interaction of the income requirement, defined in terms of full-time employment at minimum wage, with the separate employment requirement. If a family meets the employment requirement, why impose a separate income requirement defined by full-time work? Conversely,

if a family meets the income requirement, and is employed, why require that employment to be full-time, rather than part-time?

p. 6, l. 18

Will the work requirements apply only as initial eligibility criteria, or as ongoing criteria? If it is the latter will the PHAs' discretion to overlook breaks in employment extend to interruptions after the initial eligibility determination?

PHA Discretion over Lender Qualifications and Loan Terms

p. 8, l.6

If the PHAs review lender qualifications case-by-case, rather than establishing standards at the outset, can similarly situated families be treated differently?

p. 46

Did you consider a prohibition on predatory lending practices in the program? Because the protections against predatory lending are mostly within PHA discretion, they seem too weak.

Terminations of Homeownership Assistance

p. 10, l. 8

Are there any good cause exceptions to the automatic termination of homeownership assistance 180 days after last housing assistance payment on behalf of the family?

p. 10, l. 32 and p. 58, l. 25

How do the portability provisions apply if participating PHAs have different standards for eligibility?

p. 10, l. 27 and p. 87, l. 9

Are there any exceptions for a family that has to move for a job or family emergency?

Should there be a work-move exception to the prohibition of continued assistance to a family with interest in a prior home?

Should the requirement that a family reside in the home to qualify for continued homeownership assistance accommodate emergency moves, or job-related moves?

We are wondering about the willingness of a family to take a risk on homeownership if they may both lose assistance AND the house if they are forced to move. In a slow market, where the home may be difficult to sell – the family may not be able to continue making payments if they have to pay for housing in a new place. Foreclosure may follow.

These are families living close to poverty that we will have encouraged to both work and buy a home. Do we want to make them choose between a job and homeownership?

p. 11, l. 19

Should PHAs have the flexibility to decide whether someone can return to rental assistance after default? Why wouldn't we want to have some right to continued assistance for good cause? Otherwise, it may be too much of a risk for a family to pursue homeownership. For example, what if a one spouse dies, or leaves the family and the other spouse is unable to meet the work requirement? Since we would provide rental assistance to a family that had NOT been receiving it who lose their home to foreclosure, why would we deny it to a family that tried homeownership and with Section 8 assistance, but failed?

p. 12, l. 7

Will the requirement that refinancing be subordinate to the recapture lien serve as a barrier to financing?

p. 40, l. 1, p. 83, l. 29

The delegation of discretion to the local PHA over whether to issue rental vouchers if the individual cannot find a home within the allotted time may discourage use of the homeownership option. Why would PHAs want this discretion?

Other

p. 3, l. 8

Is there a reason not to repeat the cited preamble language from the proposed rule, providing additional details regarding the amendments to 24 CFR part 982, subpart M, here?

p. 6, l. 24

The rule requires that the home either be under construction or already existing. What will this mean in a tight market? It seems like it may not be possible to find a home under construction. The contract may have to be signed to access a new home. Are there policy reasons to discourage the use of Section 8 for new construction?

p. 19, l. 21

Why did the language on the minimal impact of income targeting requirements come out? Moreover, even if the families who opt for homeownership assistance are drawn primarily from Section 8 participants, rather than Section 8 applicants won't the income targeting requirements have an effect over time?

p. 42, l. 31, p. 84 l. 5

Why were the counseling items merely suggested rather than mandatory? Are there some that should be mandatory for use of public funds?

Christina S. Ho

06/19/2000

07:24:23 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP

cc:

Subject: this is the homeownership statutory language

this is 42 U.S.C. 1437f(y)

(y) Homeownership option

(1) Use of assistance for homeownership

A public housing agency providing tenant-based assistance on

behalf of an eligible family under this section may provide assistance for an eligible family that purchases a dwelling unit

(including a unit under a lease-purchase agreement) that will be

owned by 1 or more members of the family, and will be occupied by

the family, if the family -

(A) is a first-time homeowner, or owns or is acquiring shares in a cooperative;

(B) demonstrates that the family has income from employment or other sources (other than public assistance, except that the Secretary may provide for the consideration of public assistance in the case of an elderly family or a disabled family), as determined in accordance with requirements of the Secretary, that is not less than twice the payment standard established by the public housing agency (or such other amount as may be established by the Secretary);

(C) except as provided by the Secretary, demonstrates at the time the family initially receives tenant-based assistance under this subsection that one or more adult members of the family have achieved employment for the period as the Secretary shall require;

(D) participates in a homeownership and housing counseling program provided by the agency; and

(E) meets any other initial or continuing requirements established by the public housing agency in accordance with requirements established by the Secretary.

(2) Determination of amount of assistance

(A) Monthly expenses not exceeding payment standard

If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, do not exceed the payment standard, the monthly assistance payment shall be the amount by which the homeownership expenses exceed the highest of the following amounts, rounded to the nearest

dollar:

- (i) 30 percent of the monthly adjusted income of the family.
- (ii) 10 percent of the monthly income of the family.
- (iii) If the family is receiving payments for welfare assistance from a public agency, and a portion of those payments, adjusted in accordance with the actual housing costs of the family, is specifically designated by that agency to meet the housing costs of the family, the portion of those payments that is so designated.

(B) Monthly expenses exceed payment standard

If the monthly homeownership expenses, as determined in accordance with requirements established by the Secretary, exceed the payment standard, the monthly assistance payment shall be the amount by which the applicable payment standard exceeds the highest of the amounts under clauses (i), (ii), and (iii) of subparagraph (A).

(3) Inspections and contract conditions

(A) In general

Each contract for the purchase of a unit to be assisted under this section shall -

- (i) provide for pre-purchase inspection of the unit by an independent professional; and
- (ii) require that any cost of necessary repairs be paid by the seller.

(B) Annual inspections not required

The requirement under subsection (c)(8)(A)(ii) [5] of this section for annual inspections shall not apply to units assisted under this section.

(4) Other authority of the Secretary

The Secretary may -

(A) limit the term of assistance for a family assisted under this subsection; and

(B) modify the requirements of this subsection as the Secretary determines to be necessary to make appropriate adaptations for lease-purchase agreements.

(5) Inapplicability of certain provisions

Assistance under this subsection shall not be subject to the requirements of the following provisions:

(A) Subsection (c)(3)(B) [5] of this section.

(B) Subsection (d)(1)(B)(i) of this section.

(C) Any other provisions of this section governing maximum amounts payable to owners and amounts payable by assisted families.

(D) Any other provisions of this section concerning contracts between public housing agencies and owners.

(E) Any other provisions of this chapter that are inconsistent with the provisions of this subsection.

(6) Reversion to rental status

(A) FHA-insured mortgages

If a family receiving assistance under this subsection for occupancy of a dwelling defaults under a mortgage for the dwelling insured by the Secretary under the National Housing Act (12 U.S.C. 1701 et seq.), the family may not continue to

receive rental assistance under this section unless the family (i) transfers to the Secretary marketable title to the dwelling, (ii) moves from the dwelling within the period established or approved by the Secretary, and (iii) agrees that any amounts the family is required to pay to reimburse the escrow account under section 1437u(d)(3) [5] of this title may be deducted by the public housing agency from the assistance payment otherwise payable on behalf of the family.

(B) Other mortgages

If a family receiving assistance under this subsection defaults under a mortgage not insured under the National Housing Act (12 U.S.C. 1701 et seq.), the family may not continue to receive rental assistance under this section unless it complies with requirements established by the Secretary.

(C) All mortgages

A family receiving assistance under this subsection that defaults under a mortgage may not receive assistance under this subsection for occupancy of another dwelling owned by one or more members of the family.

(7) "First-time homeowner" defined

For purposes of this subsection, the term "first-time homeowner" means -

- (A) a family, no member of which has had a present ownership interest in a principal residence during the 3 years preceding the date on which the family initially receives assistance for homeownership under this subsection; and
- (B) any other family, as the Secretary may prescribe.

→ Sherri Steisel
→

→ Saw Ship from
Southern Poverty Institute

→ South Carolina
→ Alabama
→ Georgia
→ Louisiana

06-05-00

100 comments on NPRM

Rod Solomon - PH
E.P.
Jerry Benoit
Jim
Andrea Stearns

differences

recaptures - see p. 97
there are other changes

1992 - homeownership statute passed in 1992

Cuomo → revised version in Public Housing Reform Act

demo authority in the law

- can follow proposed rule

14 PHAs have

There have been 10 closings
ship in demos

minimum - 10 years

current special survey for DP assistance?

does not bar predatory lending / balloon payments

Burlington }
Vermont } working w/ a non-profit CDBG

- work
 - counseling
 - earned income at min wage
- } other guidelines
~~FA~~

lots of emphasis on counseling

main objection to FHA too limited

still dealing w/ FHA on how they are going to do it.

- only program participants
- FSI
- fix up credit history first
- 2 years of work

in the demo.

• NRI → as a partner?



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

6/2/00

TO: MARGIE WALLER

HERE IS THE NEW VERSION
OF HUD'S SEC. 8 HOMEOWNERSHIP
Rule. WE WILL BE SURE TO
INVOLVE YOU IN ANY DISCUSSIONS
WITH HUD.

JOE LACKEY