

FOIA MARKER

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

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Domestic Policy Council

Series/Staff Member: Margy Waller

Subseries:

OA/ID Number: 21587

FolderID:

Folder Title:

Section 8 Homeownership [binder] [5]

Stack:

S

Row:

98

Section:

6

Shelf:

3

Position:

2



Margy Waller

07/12/2000 07:39:01 PM

.....

Record Type: Record

To: Rod_Solomon@HUD.GOV
cc: Andrea E. Jacobson/OMB/EOP@EOP, Andrea Kane/OPD/EOP
bcc: Records Management@EOP
Subject: Re: Section 8 Homeownership rule. 

A couple thoughts:

1) PREAMBLE

It looks like only the overview from the NPRM preamble was added to the Final Rule. I had suggested we also add the old parts III and IV which explain "who is assisted" and "how to qualify for homeownership assistance". Of course, all of the old preamble would have to be edited (small changes) to reflect the changes from the NPRM.

My alternative (and preferred) suggestion is that you first summarize what was in the proposed rule (using the old preamble) followed by comments, followed by a summary of the final rule. As it is organized now, the summary of changes made precedes the program description and there is no information about what was in the proposed rule, except what can be inferred from the comments section.

2) Definition of income for eligibility determination

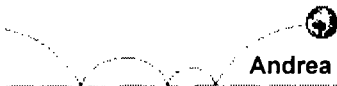
Andrea tells me you are considering either a) dropping the minimum income requirement or b) clarifying that EITC and food stamps count as income.

We prefer the latter, for two reasons:

* If you don't provide a minimum income requirement, PHAs (as you said when I asked this question yesterday) will have the option to set their own minimum income and may set it so low that families who will not get loans or if they do, will be at risk of default, or set it so high that families we want to target will not be eligible.

* We want PHAs to count EITC and food stamps for purposes of eligibility for this program - and if we don't say so explicitly, PHAs will NOT count these sources because the rules prohibit them from counting in all other assisted housing program income calculations (except self-sufficiency).

Andrea E. Jacobson


Andrea E. Jacobson

07/12/2000 06:21:05 PM

Record Type: Record


Andrea E. Jacobson

07/10/2000 02:26:39 PM

Record Type: Record

To: Camille_E._Acevedo@hud.gov, Ariel_Pereira@HUD.GOV @ inet, Rod_Solomon@hud.gov
cc: See the distribution list at the bottom of this message
Subject: Section 8 Homeownership: Definitions

Margy and I are sorting our way through different versions/definitions of "income" and "welfare assistance" and need clarification on the following:

(1) We need to see the most recent 24 CFR 5.609(c) 17. The most recent version I have is April 1999 and I have not been successful at retrieving the newest version from the Federal Register web site.

(2) We need the notice that is referenced by the language in 24 CFR 5.609(c) 17. Ariel: This is the section I mentioned to you earlier. I got your voice mail message, but wasn't sure how clear I was in my explanation of what I wanted to see. The language says HUD will publish a list of amounts specifically excluded from consideration as income for purposes of determining eligibility etc.

(3) After looking at the definitions of income and welfare assistance, we are not certain what the impact of an IDA would be on income. We imagine some participants would have IDAs and/or wish to use IDA proceeds toward the purchase. Can you explain how this would work?

Message Copied To:

Margy Waller/OPD/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
James F. Jordan/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP

To: Margy Waller/OPD/EOP@EOP
cc:
Subject: Re: Section 8 Homeownership rule.

----- Forwarded by Andrea E. Jacobson/OMB/EOP on 07/12/2000 06:31 PM -----



Rod Solomon <Rod_Solomon@HUD.GOV>
07/12/2000 02:27:31 PM

Record Type: Record

To: Andrea E. Jacobson/OMB/EOP
cc:
Subject: Re: Section 8 Homeownership rule.

There is a new Overview in the rule (part III). Is there a problem with it?

Andrea_E._Jacobson@omb.eop.gov on 07/12/2000 11:40:31 AM

To: Rod Solomon/PIH/HHQ/HUD@HUD, Ariel Pereira/OGC/HUD/GOV@HUD
cc: Margy_Waller@opd.eop.gov, Stuart_Shapiro@omb.eop.gov,
Joseph_F._Lackey_Jr@omb.eop.gov
Subject: Re: Section 8 Homeownership rule.

----- Forwarded by Andrea E. Jacobson/OMB/EOP on
07/12/2000 11:48 AM -----

(Embedded Margy Waller
image moved 07/11/2000 08:38:48 PM
to file: (Embedded image moved to file:
PIC13684.PCX) PIC28183.PCX)

Record Type: Record

To: andrea e. jacobson/omb/eop@eop

cc: joseph f. lackey jr./omb/eop@eop, francis s. redburn/omb/eop@eop,
Lauren Larson/OMB/EOP@EOP, Andrea Kane/OPD/EOP

Subject: Re: Section 8 Homeownership rule. (Document link not converted)

I have just now had time to take a glance at the redline/strikeout draft of the rule.

One quick question: Are parts III and IV of the preamble in the NPRM included in the new draft? If not, why not? The explanations of who is assisted and how to qualify are important to understanding the whole rule - including the comments.

 - PIC13684.PCX

 - PIC28183.PCX



Margy Waller

07/14/2000 05:33:36 PM

.....

Record Type: Record

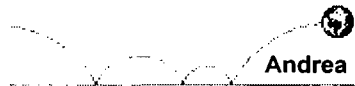
To: Andrea E. Jacobson/OMB/EOP

cc:

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

Andrea E. Jacobson



Andrea E. Jacobson

07/14/2000 03:25:14 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP

cc: Adam Hoffberg/OMB/EOP@EOP, Alan B. Rhinesmith/OMB/EOP@EOP, Stuart Shapiro/OMB/EOP@EOP

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

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

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

Margy Waller



Margy Waller

07/14/2000 02:49:51 PM

.....

Record Type: Record

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

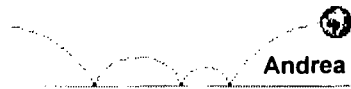
cc:

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

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

Andrea E. Jacobson



Andrea E. Jacobson

07/14/2000 02:44:37 PM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP

cc:

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

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

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

Margy Waller



Margy Waller

07/14/2000 02:42:46 PM

.....

Record Type: Record

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

cc:

bcc:

Subject: Re: Sec 8 Homeownership Conference Call 

thanks. 1:30?

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

Andrea E. Jacobson



Andrea E. Jacobson

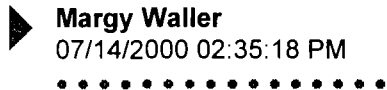
07/14/2000 02:34:54 PM

Record Type: Record

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

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

Margy Waller



Margy Waller

07/14/2000 02:35:18 PM

.....

Record Type: Record

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

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

Andrea E. Jacobson



Andrea E. Jacobson

07/14/2000 02:30:06 PM

Record Type: Record

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

How's 10:30 AM?

Margy Waller

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

Record Type: Record

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

Monday is pretty open for me right now, too.
Andrea E. Jacobson

 **Andrea E. Jacobson** 07/14/2000 10:06:30 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Adam Hoffberg/OMB/EOP@EOP
Subject: Sec 8 Homeownership Conference Call

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

Message Sent To: _____
Margy Waller/OPD/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
Rod_Solomon@hud.gov
Camille_E._Acevedo@hud.gov
Ariel_Pereira@HUD.GOV

Message Copied To: _____
stuart shapiro/omb/eop@eop
rod_solomon@hud.gov
camille_e._acevedo@hud.gov
ariel_pereira@hud.gov
adam hoffberg/omb/eop@eop

~~329~~ 5195

56141
Andrea

Billing Code 4210-33P
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR-4427-P-01]

RIN : 1547-AB90

Section 8 Home Ownership Program

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

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations for the Section 8 tenant-based rental voucher program at 24 CFR part 982. These amendments implement 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. Section 8(y) authorizes a public housing agency to provide tenant-based assistance for an eligible family that purchases a dwelling unit that will be occupied by the family.

DATES: Comments due date: Comments on the proposed rule and the proposed information collection requirements are due on or before: [Insert date 60 days after date of publication in the FEDERAL REGISTER.]

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 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. General Description of Homeownership Option

This rule implements the "homeownership option" under Section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)) (the "1937 Act"). Section 8(y) authorizes Section 8 tenant-based assistance for an eligible family that occupies a home purchased and owned by members of the family. Although Section 8(y) was originally enacted by section 185 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992; 106 Stat. 3672), Section 8 homeownership was never implemented because the program was unworkable without statutory change. Section 8(y) was amended by section 555 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, approved October 21, 1998; 112 Stat. 2461).

This rule implements the section 8(y) homeownership option by adding a new "special housing type" under 24 CFR part 982, subpart M, of the unified rule for the Section 8 tenant-based voucher and certificate programs. Subpart M describes program requirements for variants from the basic Section 8 tenant-based rental assistance programs.

Homeownership assistance offers a new option for families that receive Section 8 tenant-based assistance. As for other special housing types, HUD does not provide any additional or separate funding for homeownership assistance under Section 8(y). If a Public Housing Agency (PHA) chooses to offer Section 8 tenant-based assistance under the new homeownership option, a qualified family may freely choose whether to request rental assistance or to instead request homeownership assistance.

An applicant admitted to the tenant-based programs may receive Section 8 voucher assistance to purchase, rather than rent, a home. A participant receiving Section 8 tenant-based rental assistance may purchase a home with continued assistance under the homeownership option.

In general, a PHA that administers Section 8 tenant-based assistance has the choice whether to offer homeownership assistance as an option for qualified applicants and participants in its agency's Section 8 tenant-based program. The PHA may choose to make homeownership assistance freely available for any qualified applicant or participant, or to restrict homeownership assistance to families or purposes defined by the agency. (The PHA is only required to offer homeownership assistance if needed as a reasonable accommodation for a family member who is a person with disabilities.)

As required by law, the homeownership option is not available for units receiving Section 8 project-based assistance. By law, homeownership assistance under Section 8(y) may only be provided for families receiving "tenant-based assistance" (42 U.S.C. 1437f(y)(1)).

In implementing the homeownership option, HUD wishes to strike a balance that expands homeownership opportunities, while minimizing defaults that negatively impact assisted homeowners and their neighborhoods. HUD hopes to improve on past homeownership programs by learning from prior errors and building upon the successful features of similar programs. HUD believes the regulatory proposals contained in this rule achieve these goals, and welcomes public comment on ways to improve the implementation of the Section 8 homeownership option.

II. Overview of How the Section 8 Homeownership Program Works

An overview of how the Section 8 homeownership program works follows. Additional detail will be provided elsewhere in the preamble and regulation text.

PHA administration of the Section 8 homeownership program differs from the tenant-based rental program in many ways. A PHA may use the certificate and voucher program funding already under Annual Contributions Contract (ACC)

or new tenant-based Section 8 funding for rental or homeownership purposes. The PHA may opt to limit the number of Section 8 homeownership vouchers or not implement the homeownership option. There is no separate or additional funding for the homeownership program.

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

The PHA may limit the number of homeownership families and there are statutory family eligibility requirements such as a minimum level of non-welfare income and a history of full-time employment. (The employment history requirement is not applicable to elderly and disabled families, and there is a modified income requirement for elderly and disabled families.) The program is generally limited to first-time homeowners. The PHA may add other local eligibility requirements such as participation in the FSS program.

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

The PHA must advise the family of any deadlines on locating a home, securing financing, and purchasing the home. The PHA does not issue a certificate or voucher to the family. If the family is unable to locate a home to purchase within the PHA established deadlines, the PHA may issue the family a rental certificate or voucher.

The family is free to select an existing (not under construction) home of their choice located within the PHA jurisdiction. If the family qualifies for portability, the family may also select a home in the jurisdiction of another PHA, if the receiving PHA is approving units under the Section 8 homeownership option. The receiving PHA may absorb the family into their Section 8 program or bill the initial PHA for the housing assistance payments.

The receiving PHA will arrange for any necessary counseling. The receiving PHA homeownership policies will apply to the portable family.

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

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

It is anticipated that mortgage lenders will consider the Section 8 assistance as a source of family income when underwriting the loan. If purchase of the home is financed with Federal Housing Administration (FHA)-insured mortgage financing, such financing is subject to FHA mortgage insurance credit underwriting requirements. If purchase of the home is financed (in whole or in part) without FHA-insured mortgage financing, the PHA must require that the underwriting procedures used by the lender comply with the basic mortgage insurance credit underwriting requirements for FHA-insured single family mortgage loans. The FHA single family underwriting standards are described in HUD Handbook 4155.1 (titled "Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Family Properties.") HUD specifically invites public comment on whether the final rule should require the use of the

FHA underwriting standards, or whether this requirement would unduly restrict the homeownership option.

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

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

The PHA must use the utility allowance schedule and payment standard schedules applicable to the Section 8 voucher rental program.

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

Except for elderly and disabled families, Section 8 homeownership assistance may only be paid for a maximum period of up to ten years. The PHA may establish a shorter maximum assistance term. Elderly and disabled families are exempt from subsidy time limits. HUD invites public comment on the reasonableness of the ten year limit on Section 8 homeownership assistance. Specifically, commenters are invited to submit their thoughts on

whether HUD should lengthen or shorten the ten year limit proposed in this rule.

The head of household, and any spouse of the head of household, that has previously defaulted on a mortgage obtained through the homeownership option is barred from receiving future Section 8 homeownership assistance.

HUD specifically invites comments on whether, or under what conditions, a family that has defaulted on a mortgage securing debt to purchase a home under the homeownership option should be permitted to receive Section 8 rental assistance after the mortgage default. Such conditions may include requiring that the family be returned to the waiting list.

The PHA will earn the same administrative fees as in the tenant-based rental program. The administrative fee is earned for each month that homeownership assistance is paid.

A PHA opting to administer the Section 8 homeownership program must establish local homeownership policies. The following policies must be described in the PHA administrative plan: any local eligibility criteria (§§ 982.626(b) and 982.627(a)(5)); any minimum income requirements (§ 982.627(b)); any minimum cash downpayment or equity requirements; any requirements for financing purchase of a home, including requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), terms of financing (for example, a prohibition of balloon payment mortgages and establishment of a minimum homeowner equity requirement), and financing affordability (§ 982.631); the maximum homeownership assistance term (§982.633); PHA policy for payment of the HAP to the family or lender (§982.634(d)); PHA policy about issuing the family a rental voucher if the family does not find a suitable house to buy, or defaults on the home mortgage loan (§§ 982.628(c) and 982.636); PHA maximum times to locate and purchase a home (§ 982.628); and any PHA requirements for continuation of homeownership assistance (§ 982.632(b)(7)).

III. Who is Assisted

A. General

The homeownership option is used to assist families in two types of housing:

1. A unit owned by the family - One or more family members hold title to the home.
2. A cooperative unit - One or more family members hold membership shares in the cooperative.

B. Assistance for homeowner

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

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

1. A "first-time homeowner";
2. A family that owns or is acquiring shares in a cooperative; and
3. "Any other family, as the Secretary may prescribe." (In the law, this third, open-ended category is formally included in the definition of "first-time homeowner.")

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

Section 8 homeownership assistance for cooperative homeowners is specifically authorized for both a family that is a first time cooperative

homeowner and a family that owned their cooperative unit prior to receiving Section 8 assistance. Cooperative homeowners were eligible for tenant-based assistance prior to passage of the Quality Housing and Work Responsibility Act of 1998. Congress intends that cooperative homeowners continue to be eligible for tenant-based assistance regardless of their status as a first time homeowner.

To qualify as a "first-time homeowner," the assisted family may not include any person who owned a "present ownership interest" in the residence of any family member in the last three years (regulatory definition at § 982.4; statutory definition at 42 U.S.C. 1437f(y)(7)(A)). Such interest includes ownership of title or of cooperative membership shares. The restriction to "first-time" homeowners is intended to direct homeownership assistance to "new" homeowners who may be unable to purchase a home without this assistance, but to discourage use of Section 8 subsidy on behalf of families who have achieved homeownership independently, without benefit of the Federal Section 8 subsidy. In addition, the head of household, and any spouse of the head of household, that has previously defaulted on a mortgage obtained through the homeownership option is barred from receiving future Section 8 homeownership assistance.

Under the law, HUD is authorized to permit Section 8 homeownership assistance for "any other family" as the Secretary may prescribe - that is, for a family other than a first-time homebuyer. HUD requests comments concerning whether HUD should exercise the statutory authority to exempt any categories of families from the first-time homeowner requirement. For example, a possible exemption from the first-time homeowner eligibility requirement is a divorced spouse who does not currently own a home but had joint ownership of a home with their ex-spouse in the last three years.

C. Assistance for cooperative member

Section 8(y) authorizes homeownership assistance for a family that "owns or is acquiring shares in a cooperative." Thus, the law allows assistance for a family that already owns cooperative shares before commencement of Section 8

homeownership assistance, not just for a family that acquires cooperative shares for the first time with the support of such assistance. In this respect, the law treats ownership of cooperative membership different from ownership of title to the home. In the latter case, the law authorizes assistance for a first time homeowner only (and for additional families only in circumstances prescribed by the Secretary). The rule specifies that cooperative membership shares may be purchased at or before commencement of homeownership assistance (see the definition of "membership shares" at § 982.4).

Before this rule, HUD has provided essentially the same Section 8 rental assistance for a cooperative member as for a family that chooses to rent a unit in conventional rental housing. Since the origin of the Section 8 program, the law has provided that with respect to members of a cooperative, "rent" means the charges under the occupancy agreements between the members and the cooperative (42 U.S.C. 1437f(f)(5)). Thus Section 8 assistance is paid to cover the difference between the cooperative occupancy charges and the income-based tenant rent.

Under the existing rules for the Section 8 tenant-based program, assistance for a family that chooses to reside in a cooperative is largely subject to the same rules and contractual requirements as for a family that chooses a rental housing unit. Under these existing rules, the cooperative occupancy agreement (between the family and the cooperative) is treated like the lease between the family and the owner in standard rental housing. The cooperative occupancy agreement must include the requirements of the standard program "lease addendum," including requirements concerning lease term, grounds for eviction, and owner responsibility of unit maintenance. Cooperative carrying charges are treated like rent to owner (contract rent), and requirements including annual rent adjustments for units assisted in the certificate program are applicable.

In short, assistance for cooperative residents under the old rule is not designed from the ground up as a form of homeownership assistance. The old

Section 8 requirements do not fit the normal structure of occupancy and responsibility in cooperative housing. In particular, while a cooperative member is normally responsible for maintenance of the individual unit, the Section 8 regulations and contracts provide that the "owner" - including a cooperative - is largely responsible for unit maintenance.

The mismatch between Section 8 rental program requirements and normal cooperative procedures reduces availability of cooperative units for occupancy by Section 8 families. Cooperatives may be unable or unwilling to grant separate and special treatment for Section 8 families that does not apply to other cooperative members, for example, differences concerning the amount of cooperative carrying charges, procedures or grounds for termination of cooperative membership, or enforcement of member maintenance obligations. Cooperatives are accustomed to use standard forms of occupancy agreement and other legal documentation governing the rights of members and of the cooperative entity. The cooperatives may decline to accommodate modifications to meet requirements of the Section 8 program, or to enter into a contract with the PHA (the HAP contract), as required for the normal Section 8 rental program.

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

In the new homeownership option, Section 8 assistance is paid on behalf of a cooperative member, but there is no requirement that the cooperative enter into any agreement or any direct relationship with the PHA that provides Section 8 assistance for the cooperative member. The cooperative is not asked to modify any ordinary requirement for cooperative membership or occupancy,

nor asked to modify any requirement concerning assessment or collection of the cooperative carrying charge, maintenance of the unit or sanctions for violation of cooperative requirements.

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

1. Cooperative member. A family of which one or more members owns membership shares in a cooperative.
2. Membership shares. Shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in a particular apartment in the cooperative, and the right to participate in management of the housing.

The existing HUD rules for cooperative housing in the tenant-based rental program were codified in April 1998. These rules provide that a family may only receive assistance in a cooperative that has adopted requirements to maintain continued affordability for lower income families after transfer of a member's interest. This affordability requirement was based on a provision of the prior voucher law that was removed in the October 1998 statutory amendments. There is now no such statutory affordability requirement for Section 8 tenant-based assistance to cooperative residents - whether such assistance is provided under the rental assistance program or under the new Section 8(y) homeownership option - and there is no such requirement under this rule.

HUD believes that such a continuing affordability requirement would restrict housing choice of Section 8 families among available cooperative units. Such a requirement would also diminish a major advantage of homeownership - the incentive for an assisted family to maintain and improve

the housing and to receive full value upon a future sale of the home. This rule removes the federal mandate for existing continuing affordability requirements for rental assistance in cooperative housing.

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

The existing regulation is amended by this rule to reflect the normal division of maintenance responsibility in cooperative housing for which rental (not homeownership) assistance is being provided (§ 982.619(d)(3)). The revised rule provides that the family is responsible for a breach of the HQS caused by failure to perform maintenance in accordance with the cooperative occupancy agreement between the family and the cooperative. The PHA must take prompt and vigorous action to enforce the family maintenance obligation, and may terminate assistance for failure to perform maintenance in accordance with the cooperative occupancy agreement (§ 982.619(d)(4)).

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

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

In the new homeownership cooperative option under Section 8(y), there is

no HAP contract (between the PHA and the cooperative as unit "owner") and no lease (between the cooperative and the family). The unit is only inspected before the commencement of assistance. There is no requirement that the family or cooperative assure that the unit continues to satisfy HQS during the continuation of assisted occupancy. Consequently, there is no need to specify any allocation of maintenance responsibility between the cooperative and the family.

D. Lease-purchase agreement

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

Prior to enactment of the Quality Housing and Work Responsibility Act of 1998, a family that received Section 8 rental subsidy could exercise an option to purchase the unit under a lease-purchase agreement. However, there were problems in applying the rent reasonableness requirements and, as noted above, Section 8 rental subsidy terminated when the family took title to the home. Thus the prospective loss of subsidy discouraged the family from taking title, and moving from rental to homeownership. However, Section 8(y) now provides a vehicle for continuation of Section 8 assistance after the family takes title to the home.

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

A new § 982.317 is added to describe the requirements for lease-purchase agreements. The housing assistance payment for a lease-purchase unit may not

exceed the amount that would be paid on behalf of the family if the rental unit was not subject to a lease-purchase agreement. Any "homeownership premium" 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. "Homeownership premium" is defined as an 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. Families are permitted to pay an extra amount out-of-pocket to the owner for purchase related expenses.

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

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

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

HUD requests comments on whether the family should be subject to any of the homeownership requirements prior to entering into a lease-purchase arrangement, instead of delaying the requirements until the family is ready to purchase the home.

IV. How to Qualify for Homeownership Assistance

A. General

To qualify for assistance under the homeownership option, a family must meet the general requirements for admission to the PHA's Section 8 tenant-based voucher program, and additional special requirements for homeownership assistance (§ 982.627). At commencement of homeownership assistance, the family must meet homeownership assistance requirements concerning:

1. Any PHA minimum income requirements;
2. Family employment;
3. Prior default on a mortgage securing debt to purchase a home under the homeownership option; and
4. Other initial requirements established by the PHA.

B. Minimum Income Requirement

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

Section 8(y) provides that a family may not receive homeownership assistance unless the family demonstrates that gross monthly income is at least two times the voucher "payment standard" or an "other amount" established by the Secretary (Section 8(y)(1)(B), 42 U.S.C. 1437f(y)(1)(B)). The rule provides that the family must demonstrate that the head of household and spouse have qualified monthly income of not less than any amount established in the PHA administrative plan. (§ 982.627(b)(1)).

The law does not specify whether the minimum income requirement is only applied at initial qualification for commencement of homeownership assistance, or is also a continuing requirement that must be maintained so long as the family is receiving assistance under the homeownership option. (By contrast, the law explicitly provides that the statutory employment requirement only applies at the time the family initially receives homeownership assistance.) HUD has decided that any minimum income requirement will only be applied to

determine initial qualification to purchase a particular home, not as a continuing requirement. This policy gives assurance to the family, and possibly to a potential mortgage lender, that the stream of homeownership assistance payments will not be disrupted because of a drop in family income.

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

The law provides that the income counted in meeting any minimum income requirement under the homeownership option must come from sources other than "public assistance." Thus, PHAs may limit homeownership assistance to families with substantial non-welfare income available to pay housing and non-housing costs. However, the law provides that HUD may count public assistance in determining availability of voucher homeownership assistance for an elderly or disabled family (in which the household head or spouse is an elderly or disabled person). The rule defines the meaning of "public assistance" (§ 982.4), thereby identifying the types of income that may not be included in determining whether a family meets the homeownership minimum income standard.

The rule also clarifies that the requirement to disregard public assistance income (as defined in this proposed rule) only applies in determining whether a family has the minimum income to qualify for homeownership assistance. However, public assistance income is counted for other program purposes: in determining income-eligibility for admission to the voucher program, and in calculating the amount of the monthly homeownership assistance payment for a family assisted under the homeownership option (§ 982.627(b)(2)(ii)).

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

or disabled family in determining whether the family meets the minimum income requirement for homeownership assistance (§ 982.627(b)(2)). This requirement to count public assistance incomes in determining whether a family has the minimum income to qualify for homeownership assistance only applies, however, to families which satisfy the statutory definition of an elderly or disabled family. In particular, as required by the law, the requirement to count public assistance income does not apply in the case of a family that includes a disabled person other than the household head or spouse (and where the household head or spouse are not elderly or disabled).

C. Family employment

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

The rule provides at § 982.627(c) that a family seeking homeownership assistance must demonstrate that the head of household or spouse is currently employed on a full-time basis, and have been continuously so employed during the year before commencement of homeownership assistance. The one-year employment requirement, coupled with any minimum income requirement as discussed above indicate that the family is a good candidate for homeownership (i.e., that the family has the economic resources to handle the responsibilities of homeownership). HUD is requiring consideration of the employment history of the head of household or spouse, rather than any adult family member, to ensure that this important requirement is applicable to the family members who will be executing the contract of sale and mortgage or loan documents.

Under the law, HUD has broad authority to allow exceptions to the statutory employment requirement. As in the case of any minimum income requirement, the rule provides that the employment requirement does not apply to an elderly or disabled family (§ 982.627(c)(2)). In addition, the rule

provides that if a family other than an elderly or disabled family includes a person with disabilities, the PHA must grant exemption from the employment requirement if required as a reasonable accommodation for a disabled person under HUD rules.

D. Discussion of other requirements

1. Homeownership counseling. Section 8(y) provides that a family that receives assistance under the homeownership option must participate in a homeownership and housing counseling program provided by the PHA (42 U.S.C. 1437f(y)(1)(D)). The rule provides that before commencement of homeownership assistance the family must attend and satisfactorily complete the pre-assistance counseling program required by the PHA (§ 982.629(a)).

The PHA pre-assistance counseling program must cover: home maintenance, budgeting and money management, credit counseling, how to negotiate the purchase price of a home, how to get homeownership financing (including pros and cons of different types of financing), how to find a home (including information about homeownership opportunities, schools, and transportation) and advantages of purchasing and how to locate a home in an area that does not have a high concentration of low-income families (§ 982.629(b)).

The extent of counseling may be tailored to each family's needs. For example, neither a cooperative member or a family exercising a lease-purchase option need counseling on how to find a home.

The counseling may be provided by the PHA, another entity such as a HUD-approved housing counseling agency, or by both the PHA and another entity. HUD-approved housing counseling agencies provide free counseling. The HUD field office will provide the PHA with a list of the HUD-approved counseling agencies.

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

2. Financing purchase of home. Families selected to participate in the

Section 8 homeownership program must secure their own financing. If the family applies for a mortgage or loan (including an FHA mortgage), all regular lender underwriting and property inspection requirements apply.

The rule provides that a PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option (§ 982.631).

If purchase of the home is financed (in whole or in part) without FHA-insured mortgage financing, the PHA must require that the underwriting procedures used by the lender comply with the basic mortgage insurance credit underwriting requirements for FHA-insured single family mortgage loans (HUD Handbook 4155.1).

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

The PHA may set requirements concerning qualifications of lenders and terms of financing. For example, a PHA may determine that mortgages with balloon payments and certain kinds of variable interest rate loans are not in the best interest of the family because it is unlikely the family could afford the payments in a couple of years. In addition, the PHA could opt to prohibit seller financing, or to only allow seller financing in cases when the seller is a nonprofit or the purchase price can be clearly supported by an independent appraisal. Another purpose of the PHA financing review would be to determine whether the monthly mortgage or loan payment is affordable after considering other family expenses. PHAs may wish to establish minimum initial equity requirements to ensure that the family has a personal financial stake in the home, thus helping to minimize mortgage loan defaults (for example, the PHA may require that the family use its own resources to make the entire initial downpayment, or a percentage of the initial downpayment).

Although PHAs have local discretion in approving the home purchase financing arrangement, PHAs are cautioned not to use this discretion in a way that restricts the use of viable financing resources and unfairly penalizes the homebuyer. It is noted that variable interest rate loans are now commonplace and homeowners often refinance to later secure a fixed rate or a

lower monthly payment.

3. Home inspections. Two kinds of physical inspections are required in the homeownership option (in addition to, and separate from, any lender required inspections): (a) an HQS inspection by the PHA and (b) an "independent professional home inspection" by an inspector that is used in the private market by homebuyers. (§ 982.630).

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

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

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

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

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

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

HUD specifically requests comments on whether a separate HQS and home inspector inspection should be required for the Section 8 homeownership program.

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

a. A Section 8 participant receiving certificate or voucher assistance may request a PHA operating a homeownership program to determine whether the family is eligible for Section 8 homeownership assistance. If the family is determined eligible for homeownership assistance, the PHA may authorize the

family to search for a home to purchase. The family would continue to receive rental assistance until the family vacates the rental unit (consistent with the lease).

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

c. The family purchases a home under the Section 8 homeownership option. After several years the family decides that they prefer to live in a rental apartment. If there is no mortgage loan default and the family has met all obligations under the Section 8 program, the PHA may issue the family a rental voucher. If there is a default on a FHA mortgage (and assuming the family has met all the family obligations under the Section 8 program other than not causing a mortgage default), the PHA may exercise the PHA option to issue the family a rental voucher only if the family vacates the home and conveys the title in accordance with § 982.636(b)(3). If there is a non-FHA mortgage loan default, the PHA has discretion to issue the family a rental voucher or terminate assistance.

As noted above, HUD is considering establishing conditions on the ability of a family to receive Section 8 rental assistance after a mortgage default. HUD invites public comment on what types of restrictions and conditions may be appropriate. Any such conditions will be described in the final rule. HUD also requests comments on whether the incentives provided for rapid possession and title conveyance for homes with FHA mortgage defaults should be extended to all lenders including secondary market agencies.

5. Portability. Families that are determined eligible for homeownership assistance may exercise the homeownership option outside of the initial PHA's jurisdiction if the receiving PHA is administering a Section 8 homeownership program, and is accepting new families into the receiving PHA's homeownership program. See § 982.635.

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

6. Buying another home with Section 8 assistance. A homeownership family may purchase another home with Section 8 assistance provided there is no mortgage loan default.

There are no Section 8 sale recapture provisions; the family may keep any profits or proceeds from the sale of the home (assuming there are no recapture provisions associated with the family's home financing). However, most of the homeownership requirements applicable to the first home purchase remain applicable to a subsequent purchase. For example, the family must once again meet the employment threshold. The necessity of any counseling will be determined by the PHA. An independent home inspection will be conducted and the PHA will determine the acceptability of the financing. The PHA established time limit for homeownership (10 years or less) applies to the cumulative time the family receives homeownership assistance. The only exception to eligibility requirements applicable to initial receipt of homeownership assistance is that the family need not meet the first-time homebuyer requirement. (See § 982.636(c).)

7. Applicability of the Section 8 tenant-based certificate and voucher requirements to the homeownership program. Section 982.638 details the portions of the certificate and voucher regulations that apply to the homeownership special housing type. PHAs should carefully review this section of the regulations.

It is noted that all civil rights laws applicable to the Section 8 certificate and voucher programs are applicable to the homeownership program (see § 982.53 for a listing of the equal opportunity requirements applicable to the Section 8 tenant-based programs). PHAs must comply with all equal opportunity and nondiscrimination requirements imposed by contract or Federal law. In addition, PHAs are reminded that "finders-keepers" applies to homeownership assistance; PHAs may not steer families to particular units or neighborhoods. Further, as in the tenant-based rental voucher program, PHAs must provide assistance to expand housing opportunities. The PHA briefing for both rental and homeownership families must explain:

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

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

8. Link between Section 8 homeownership and the Family Self-Sufficiency (FSS) Program. PHAs may wish to link Section 8 homeownership with the FSS program. For example, participation in the FSS program could be a PHA eligibility requirement (see §§ 982.626(b) and 982.627(a)(5)). The PHA may also opt to incorporate the homeownership goal into the family's FSS contract of participation so any FSS escrow could be advanced for purchase of a home or home maintenance/improvement purposes. It is noted that FSS families must

meet the homeownership income and employment thresholds.

9. PHA determination of "home ownership expense". Section 982.634(c) details the expenses that the PHA will include when determining the family's homeownership expenses. The principal and interest amount is the debt service amount for the initial (original) mortgage debt, any mortgage insurance premium, and any refinancing of such debt. HUD requests comments on whether homeownership expense should exclude any "owner cashout" associated with refinancing of the original mortgage debt.

The utility allowance is the same utility allowance schedule as used in the rental certificate and voucher programs.

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

V. Findings and Certifications

Paperwork Reduction Act

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

As noted earlier in this preamble, the PHA does not issue the family a rental voucher or certificate or execute a housing assistance payment contract with an owner of rental property on behalf of the family participating the homeownership option. Instead, the family and PHA execute a statement of homeowner obligations. Under the homeownership option the family provides the PHA with a copy of the contract of sale rather than submitting a Request for Lease Approval and a copy of the proposed lease. The homeownership option does require an independent pre-purchase inspection in addition to the initial HQS inspection; however, this burden is off-set by the removal of the requirement that the unit be subsequently inspected no less than annually.

The OMB approval number for the Section 8 tenant-based assistance program is 2577-0169, which expires on April 30, 2001. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and

5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed 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 proposed rule under executive Order 12866, Regulatory Planning and Review. OMB determined that this proposed 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 proposed 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 proposed 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 proposed 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 proposed rule will permit a public housing agency 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 public housing agencies 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.

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

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. This proposed rule is exclusively concerned with the establishment of an alternative use of Section 8 rental voucher assistance. Specifically, the rule will authorize a public housing agency to provide tenant-based assistance for an eligible family that purchases a dwelling unit that will be occupied by the family. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects in 24 CFR Part 982

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

For the reasons discussed in the preamble, HUD proposes to amend 24 CFR parts 982 as follows:

PART 982--SECTION 8 TENANT-BASED ASSISTANCE: UNIFIED RULE FOR TENANT-BASED ASSISTANCE UNDER THE SECTION 8 VOUCHER PROGRAM

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

AUTHORITY: 42 U.S.C. 1437f and 3525(d).

2. Amend § 982.4(b) as follows:

a. Revise the definitions of "Cooperative," and "Special housing types";

b. Remove the definition of "Mutual housing"; and

c. Add the definitions of "Cooperative member," "Family," "First-time homeowner," "Home," "Homeowner," "Homeownership assistance," "Homeownership expenses," "Homeownership option," "Interest in the home," "Membership shares," "Public assistance," and "Statement of homeowner obligations" in alphabetical order.

§ 982.4 Definitions.

* * * *

(b) * * *

Cooperative. Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, 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 principal residence of any family member during the three years before commencement of homeownership assistance for the family. "Present ownership interest" in a residence includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. "Present ownership interest" in a residence does not include the right to purchase title to the residence under a lease-purchase agreement.

* * * * *

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

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

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

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

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

* * * * *

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

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

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

* * * * *

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

* * * * *

Public assistance. In the homeownership option (see § 982.627(b)): Income assistance from Federal, state or local welfare programs. Public assistance includes: Federal housing assistance or the housing component of a welfare grant; assistance under Temporary Assistance for Needy Families (TANF); Supplemental Security Income (SSI) that is subject to an income eligibility test; food stamps; general assistance or other assistance provided under a Federal, state or local program that provides assistance available to meet Family living or housing expenses.

* * * * *

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

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

* * * * *

3. 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(c)).

* * * *

4. 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.

5. 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

6. Amend § 982.601 as follows:

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

b. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e) respectively; and

c. Add new paragraph (c).

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

* * * * *

7. Amend § 982.619 as follows:

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

§ 982.619 Cooperative housing.

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

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

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

* * * * *

(d) Maintenance. (1) During the term of the HAP contract between the PHA and the cooperative, the dwelling unit and premises must be maintained in accordance with the HQS. If the dwelling unit and premises are not maintained in accordance with the HQS, the PHA may exercise all available remedies, regardless of whether the family or the cooperative is responsible for such

breach of the HQS. PHA remedies for breach of the HQS include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of the HAP contract.

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

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

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

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

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

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

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

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

* * * * *

8. Add §§ 982.625 through 982.638 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: How to qualify for homeownership assistance.
 982.628 Homeownership option: Additional PHA requirements for family search and purchase.
 982.629 Homeownership option: Homeownership counseling.
 982.630 Homeownership option: Home inspections and contract of sale.
 982.631 Homeownership option: Financing purchase of home; affordability of purchase.
 982.632 Homeownership option: Continued assistance requirements; Family obligations.
 982.633 Homeownership option: Maximum term of homeownership assistance.
 982.634 Homeownership option: Amount and distribution of monthly homeownership assistance payment.
 982.635 Homeownership option: Portability.
 982.636 Homeownership option: Move with continued tenant-based assistance.
 982.637 Homeownership option: Administrative fees.
 982.638 Homeownership option: Applicability of other requirements.

§ 982.625 Homeownership option: General.

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

- (1) A first-time homeowner; or
- (2) A cooperative member.

(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.)

§ 982.626 Homeownership option: Initial requirements.

(a) List of Federal 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 family has satisfactorily completed the PHA program of required pre-assistance homeownership counseling (see § 982.629).

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

(4) The unit has been inspected by a PHA inspector and by an independent inspector designated by the family (see § 982.630).

(5) The unit satisfies the HUD (see § 982.401 and § 982.630).

(6) The family is a first-time homeowner or cooperative member (see definitions of these terms at § 982.4) and neither the head of household or spouse has defaulted on a mortgage obtained through the homeownership option.

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

(8) In the case of assistance for a cooperative member, the cooperative membership shares may be acquired at or before commencement of homeownership assistance.

(b) Additional PHA requirements. The PHA may prescribe additional initial requirements for commencement of homeownership assistance for a family. Any such additional requirements must be described in the PHA administrative plan.

(c) Environmental requirements. The PHA is responsible for complying with the authorities listed in 24 CFR 58.6 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 purchaser of units in airport runway clear zones and airfield clear zones.

(d) 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.

§ 982.627 Homeownership option: How to qualify for homeownership assistance.

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

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

(2) The family satisfies a minimum income requirement (described in paragraph (b) of this section).

(3) The family satisfies the employment requirements (described in paragraph (c) of this section).

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

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

(b) Minimum income requirements. (1) At commencement of homeownership assistance for the family, the family must demonstrate that the head of household and spouse have qualified monthly income (gross income), as determined in accordance with § 5.609, that is not less than any minimum amount established by the PHA in accordance with the administrative plan.

(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)), the PHA shall not count any public assistance received by the family in determining qualified monthly income under this section.

(ii) The disregard of public 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 public assistance in determining qualified monthly income.

(c) Employment requirement. (1) Except as provided in paragraph (c)(2) of this section, the family must demonstrate that the head of household or spouse is currently employed on a full-time basis, and has been continuously so employed during the year before commencement of homeownership assistance for the family.

(2) The employment requirement in paragraph (c)(1) of this section does not apply to an elderly family or a disabled family (see the definitions of these terms at 24 CFR 5.403(b)). 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 24 CFR part 8.

(d) Prohibition against mortgage defaults. The PHA shall not commence homeownership assistance for a family if the head of household or spouse 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: 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 made to purchase 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.

§ 982.629 Homeownership option: Homeownership counseling.

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

(b) The PHA pre-assistance counseling program must cover these subjects:

- (1) Home maintenance (including care of the grounds);
- (2) Budgeting and money management;
- (3) Credit counseling;
- (4) How to negotiate the purchase price of a home;
- (5) How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- (6) How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction.

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

(c) The PHA may adapt pre-assistance counseling for a family to the family's needs.

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

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

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

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

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

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

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

(c) Contract of sale. (1) Before commencement of homeownership assistance, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale (see also § 982.626(a)(7)).

(2) The contract of sale must specify:

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

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

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

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

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

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

(b) If purchase of the home is financed with FHA-insured mortgage financing, such financing is subject to FHA mortgage insurance credit underwriting requirements. If purchase of the home is financed (in whole or in part) without FHA-insured mortgage financing, the PHA must require that the underwriting procedures used by the lender comply with the basic mortgage insurance credit underwriting requirements for FHA-insured single family mortgage loans.

(c) The PHA may disapprove proposed financing if the PHA determines that the debt for purchase of the home is unaffordable. In making this determination, the PHA may take into account other family expenses, such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses as determined by the PHA.

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

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

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

(b) Family obligations. To continue to receive homeownership assistance, a family must comply with the following family obligations:

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

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

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

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

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

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

(ii) In addition to other required information, the family must supply

any information as required by the PHA or HUD concerning:

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

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

(C) The family's homeownership expenses.

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

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

(7) Additional PHA requirements. The PHA may establish additional requirements for continuation of homeownership assistance for the family. The family must comply with any such requirements.

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

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

§ 982.633 Homeownership option: Maximum term of homeownership assistance.

(a) Except in the case of an elderly family or a disabled family, the family shall not receive assistance under the homeownership option for more than ten years in total. If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the ten year maximum.

(b) At any time, the PHA may establish a shorter maximum term.

§ 982.634 Homeownership options: Amount and distribution of monthly homeownership assistance payment.

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

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

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

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

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

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

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

(4) The PHA may not establish a separate payment standard for assistance under the homeownership option. The PHA must use the payment standards on the PHA payment standard schedule established pursuant to § 982.505.

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

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

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

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

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

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

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

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

(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.

(d) Payment to lender or family. The PHA must pay homeownership assistance payments either directly to the family or, at the discretion of the PHA, to a lender on behalf of the family.

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

§ 982.635 Homeownership option: Portability.

A family may qualify to move outside the initial PHA jurisdiction with continued assistance under the voucher program in accordance with portability procedures in § 982.353 and § 982.355. However, § 982.354 is not applicable. Such continued assistance under portability procedures is subject to § 982.636.

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

(a) Move to new unit. 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).

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

(1) Lack of sufficient funding. The PHA may deny permission to move with continued voucher assistance if the PHA does not have sufficient funding to provide continued assistance.

(2) Termination of assistance. At any time, the PHA may deny permission to move with continued voucher assistance in accordance with § 982.552 (grounds for denial or termination of assistance), including termination of assistance for violation of any family obligations described in § 982.632.

(3) Default on FHA-insured mortgage. If the family defaults on an FHA-insured mortgage, the PHA may deny the family permission to receive rental assistance, in accordance with the policies contained in the PHA administrative plan. Further, in the event of a default on an FHA-insured mortgage, the PHA must deny the family permission to move with continued voucher assistance unless the family demonstrates 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) Continued homeownership assistance. For each move to a new unit with continued voucher assistance under the homeownership option, the PHA must determine that all initial requirements listed in § 982.626 have been satisfied. However, the following requirements do not apply:

(1) The requirement for pre-assistance counseling (§ 982.626(a)(2) and § 982.629) 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) In the case of assistance for a homeowner, the requirement that a family must be a first-time homeowner (§ 982.625 and § 982.626) is not applicable.

§ 982.637 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.

§ 982.638 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);
- (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);
- (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 do not apply to those sections listed below, the requirements of this part 98. 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 a stage under the homeownership option:

- (1) Section 982.551(c) (Lease breach caused by family);
- (2) Section 982.551(d) (Allowing HQS inspection); and
- (3) Section 982.551(j) (Interest in unit).

Dated: April 7, 1999.

Harold Lucas, Assistant Secretary for
Public and Indian Housing

[FR-4427-P-01]

 Andrea E. Jacobson

07/10/2000 02:26:39 PM

Record Type: Record

To: Camille_E._Acevedo@hud.gov, Ariel_Pereira@HUD.GOV @ inet, Rod_Solomon@hud.gov
cc: See the distribution list at the bottom of this message
Subject: Section 8 Homeownership: Definitions

Margy and I are sorting our way through different versions/definitions of "income" and "welfare assistance" and need clarification on the following:

(1) We need to see the most recent 24 CFR 5.609(c) 17. The most recent version I have is April 1999 and I have not been successful at retrieving the newest version from the Federal Register web site.

(2) We need the notice that is referenced by the language in 24 CFR 5.609(c) 17. Ariel: This is the section I mentioned to you earlier. I got your voice mail message, but wasn't sure how clear I was in my explanation of what I wanted to see. The language says HUD will publish a list of amounts specifically excluded from consideration as income for purposes of determining eligibility etc.

(3) After looking at the definitions of income and welfare assistance, we are not certain what the impact of an IDA would be on income. We imagine some participants would have IDAs and/or wish to use IDA proceeds toward the purchase. Can you explain how this would work?

Message Copied To:

Margy Waller/OPD/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
James F. Jordan/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP

• → annual income includes welfare assistance

→ welfare assistance definition

- how is it used?

→ where is the add'l guidance?

→ use income def exclude EITC & FS

→ annual? vs? monthly?

→ revisit/
reissue

→ why does it say monthly income?
+ 2000 hours

$$40 \times \cancel{5} = 200 \text{ hours}$$

⁵
we should use annual income for
EITC purposes.

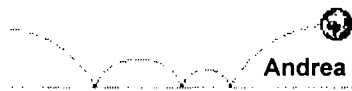
how is welfare assistance impacting calculation of
income for purpose of rent calculation?

7.11.00.

→ Louise Hunt
income verification letter

→ 2X the payment standard

→ assets



Andrea E. Jacobson

07/10/2000 02:26:39 PM

Record Type: Record

To: Camille_E._Acevedo@hud.gov, Ariel_Pereira@HUD.GOV @ inet, Rod_Solomon@hud.gov
cc: See the distribution list at the bottom of this message
Subject: Section 8 Homeownership: Definitions

Margy and I are sorting our way through different versions/definitions of "income" and "welfare assistance" and need clarification on the following:

- (1) We need to see the most recent 24 CFR 5.609(c) 17. The most recent version I have is April 1999 and I have not been successful at retrieving the newest version from the Federal Register web site.
- (2) We need the notice that is referenced by the language in 24 CFR 5.609(c) 17. Ariel: This is the section I mentioned to you earlier. I got your voice mail message, but wasn't sure how clear I was in my explanation of what I wanted to see. The language says HUD will publish a list of amounts specifically excluded from consideration as income for purposes of determining eligibility etc.
- (3) After looking at the definitions of income and welfare assistance, we are not certain what the impact of an IDA would be on income. We imagine some participants would have IDAs and/or wish to use IDA proceeds toward the purchase. Can you explain how this would work?

Message Copied To:

Margy Waller/OPD/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP
Stuart Shapiro/OMB/EOP@EOP
James F. Jordan/OMB/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP

7.10.00.

Andrea -

talked to Rod. Will not accept FSS rule.

→ child support

→ EITC

→ food stamps

→



EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget
Housing Branch

Andrea Jacobson

Phone: (202) 395-6141

Fax: (202) 395-1307

Date: 7/10 Time: _____

Number of Pages (including cover): 5

To: Margy Waller

Office number: _____ Fax Number: 6 x 7431

Comments:

If wasn't sure if Rod's fax would
include the definition of "income"
which is also very pertinent to
our discussion.



U. S. Department of Housing and Urban Development
Washington D. C. 20410-5000

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

OFFICE OF POLICY, PROGRAM AND LEGISLATIVE
INITIATIVES

FACSIMILE

Date: 7/10/00 Time: _____

Number of Pages (Including This Page): 3

To: Margy Waller

From: Loel Solomon

Fax # 456-7431

Fax # (202) 708-0866

Phone _____

Phone (202) 708-0713

Comments:

If you do not receive 3 pages (including cover sheet), please
call the telephone number listed above.

§5.603**24 CFR Subtitle A (4-1-99 Edition)**

(ii) Section 5.616 (Utility reimbursement) and the definition of utility reimbursement found in §5.603 also do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

(iii) Section 5.607 (Income limits for admission) does not apply to the Section 8 Rental Voucher and Rental Certificate Programs.

(3) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)).

(b) This subpart does not apply to HUD's Indian housing programs. The analogous rule that applies to Indian housing is located at 24 CFR part 950.

§5.603 Definitions.

As used in this subpart:

(a) The terms *elderly person*, *low-income family*, *person with disabilities*, *State*, and *very low-income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

(b) The terms *1937 Act* and *public housing agency (PHA)* are defined in §5.100.

(c) The terms *disabled family*, *elderly family*, *family*, and *live-in aide* are defined in §5.403.

(d) The following terms shall have the meanings set forth below:

Adjusted income. See §5.611.

Annual income. See §5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster

adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market

Office of the Secretary, HUD

§5.607

value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in 24 CFR part 885.

Tenant rent. The amount payable monthly by the family as rent to the PHA or owner, as applicable. Where all utilities (except telephone) and other essential housing services are supplied by the PHA or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the PHA or owner and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total tenant payment. See §5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

* *Welfare assistance.* Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§5.605 Overall income eligibility for assistance.

No family other than a low-income family shall be eligible for admission to a program covered by this part.

§5.607 Income limits for admission.

(a) *General*—(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the dwelling units that were available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by low-income families other than very low-income families. HUD reserves the right to limit the admission of low-income families other than very low-income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (b) and (c) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(b) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (a)(2) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(1) *For Section 8 Programs.* (i) Low-income families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(ii) Low-income families that are displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act (42 U.S.C. 1437o), or as a result of activities under the Rental Rehabilitation Demonstration Program;

(iii) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low-income families;

(iv) Commitment of an owner to attaining occupancy by families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the owner is pursuing this goal throughout its assisted projects in the community; and

(v) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103).

(2) *For public housing only.* (i) Need for admission of a broader range of tenants to obtain full occupancy;

(ii) Local commitment to attaining occupancy by families with a broad range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community.

(iii) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(iv) Need to avoid displacing low-income families from a project acquired by the PHA for rehabilitation.

(c) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners and PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic re-

view, based on the findings of the review.

(d) *Reporting.* PHAs and owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain the reasonably current data necessary to monitor compliance with the income eligibility restrictions described in paragraph (a) of this section.

(e) *Inapplicability to certain scattered site housing.* The income eligibility restrictions described in paragraph (a) of this section do not apply to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)).

(f) *Inapplicability to the Section 8 Rental Voucher and Rental Certificate Programs.* The provisions of this section do not apply to the Section 8 Rental Voucher and Section 8 Rental Certificate Programs.

(Approved by the Office of Management and Budget under Control number 2502-0204.)

§5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a

business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gain and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in §5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility, and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

ID: 202-395-1307 JUL 10 10:00 10:21 No. 001 P. 04

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) *For public housing only:* (i) The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the 1937 Act (42 U.S.C. 1437t), or any comparable

Federal, State, or local law during the exclusion period.

(ii) For purposes of this paragraph, the following definitions apply:

(A) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(1) Is authorized by a Federal, State or local law;

(2) Is funded by the Federal, State or local government;

(3) Is operated or administered by a public agency; and

(4) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the family member participates in a program described in this section, plus 18 months from the date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the 1937 Act. If the family member is terminated from employment with good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the FEDERAL REGISTER and distributed to PHAs and housing

owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) *For public housing only.* In addition to the exclusions from annual income covered in paragraph (c) of this section, a PHA may adopt additional exclusions for earned income pursuant to an established written policy.

(i) In establishing such a policy, a PHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the PHA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in §5.611.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

§5.611 Adjusted income.

Adjusted income means annual income less the following deductions:

(a) \$480 for each dependent;

(b) \$480 for any elderly family or disabled family;

(c) For any family that is not an elderly family or disabled family but has a member (other than the head of household or spouse) who is a person with a disability, disability assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the person with disabilities;

(d) For any elderly family or disabled family:

(1) That has no disability assistance expenses, an allowance for medical expenses equal to the amount by which the medical expenses exceed three percent of annual income;

(2) That has disability assistance expenses greater than or equal to three percent of annual income, an allowance for disability assistance expenses computed in accordance with paragraph (c) of this section, plus an allowance for medical expenses that is equal to the family's medical expenses;

(3) That has disability assistance expenses that are less than three percent

(ii) Section 5.615 (Utility reimbursement) and the definition of *utility reimbursement* found in §5.603 also do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

(iii) Section 5.607 (Income limits for admission) does not apply to the Section 8 Rental Voucher and Rental Certificate Programs.

(3) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)).

(b) This subpart does not apply to HUD's Indian housing programs. The analogous rule that applies to Indian housing is located at 24 CFR part 950.

§5.603 Definitions.

As used in this subpart:

(a) The terms *elderly person*, *low-income family*, *person with disabilities*, *State*, and *very low-income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

(b) The terms *1937 Act* and *public housing agency (PHA)* are defined in §5.100.

(c) The terms *disabled family*, *elderly family*, *family*, and *live-in aide* are defined in §5.403.

(d) The following terms shall have the meanings set forth below:

Adjusted income. See §5.611.

Annual income. See §5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster

adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market

value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in 24 CFR part 885.

Tenant rent. The amount payable monthly by the family as rent to the PHA or owner, as applicable. Where all utilities (except telephone) and other essential housing services are supplied by the PHA or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the PHA or owner and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total tenant payment. See §5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§5.605 Overall income eligibility for assistance.

No family other than a low-income family shall be eligible for admission to a program covered by this part.

§5.607 Income limits for admission.

(a) *General.* (1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the dwelling units that were available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by low-income families other than very low-income families. HUD reserves the right to limit the admission of low-income families other than very low-income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 1 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (b) and (c) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(b) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (a)(2) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(1) *For Section 8 Programs.* (i) Low-income families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(ii) Low-income families that are displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act (42 U.S.C. 1437o), or as a result of activities under the Rental Rehabilitation Demonstration Program;

payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(i) *Step 2.* Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in paragraph (c)(2)(i), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public housing maximum rent" applicable to the unit or the PHA. (This "maximum rent" shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(4) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(5) *Step 5.* The product of steps 1 through 4, as set forth in paragraph

(d)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 64 FR 13056, Mar. 16, 1999]

EFFECTIVE DATE NOTE: At 64 FR 13056, Mar. 16, 1999, §5.520 was amended by revising paragraphs (c)(1) heading and introductory text, (c)(1)(ii), (c)(2) heading and introductory text, (c)(2)(i), and (c)(2)(iv), effective Apr. 15, 1999. For the convenience of the user, the superseded text is set forth as follows:

§5.520 Proration of assistance.

(c) * * *

(1) *Section 8 assistance other than Section 8 rental voucher assistance.* For Section 8 assistance other than assistance provided under the Section 8 Rental Voucher Program, the PHA shall prorate the family's assistance as follows:

(ii) *Step 1.* Determine total tenant payment in accordance with §5.613. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) *Section 8 Rental Voucher assistance.* For assistance under the Section 8 Rental Voucher Program, the PHA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the proration voucher housing assistance payment in accordance with 24 CFR 982.505. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iv) *No effect on rent to owner.* Proration of the voucher housing assistance payment does not affect rent to the owner. The family must pay as rent the portion of rent not covered by the prorated housing assistance payment.

§5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§5.524 Compliance with non-discrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR part 100.

§5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C. 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for

the design or implementation of the verification system described in §5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

[61 FR 60540, Nov. 29, 1996]

§5.528 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance, to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations to the Public Housing and Section 8 Programs

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

SOURCE: 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

§5.601 Purpose and applicability.

(a) This subpart establishes definitions and requirements concerning income limits for admission, annual income, adjusted income, total tenant payment, utility allowances and reimbursements, and reexamination of income and family composition for:

(1) HUD's public housing program, including its public housing home ownership programs.

(2) Housing assisted under section of the United States Housing Act, 1937 (the 1937 Act) (42 U.S.C. 1437f).

(i) Section 5.613 (Total tenant payment) and the definitions of "tenant rent" and "total tenant payment" found in §5.603 do not apply to the Section 8 Rental Voucher Program.

Francis S. Redburn

07/03/2000

10:04:37 AM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc: James F. Jordan/OMB/EOP@EOP
Subject: Revised Draft of Section 8 Homeownership Rule

I will call his office in a few minutes and try to arrange a conference call time.

Attached is the latest revision of the rule, which we received last week. Note the teal blue highlighted change numbered "6." that addresses PHA capacity. This is a step in the right direction. Our intention is to focus the call on what additional requirements should be placed on local programs to increase the benefits of the program: specific underwriting standards such as downpayment/sweat equity or credit history; use of standard private or FHA underwriting; homeownership counseling that is certified by HUD or another certifying body; and/or possibly monitoring performance to ensure that success rates are above a specified standard (e.g., FHA has >90% successful repayment) and cancelling programs that don't meet this performance test over time. **Other options?**

If we can't reach agreement today, I will raise the possibility of trying to find a mutually acceptable referee to propose a solution.

----- Forwarded by Francis S. Redburn/OMB/EOP on 07/03/2000 09:56 AM -----



Ariel Pereira <Ariel_Pereira@HUD.GOV>

06/29/2000 05:29:06 PM

Record Type: Record

To: Francis S. Redburn/OMB/EOP, Joseph F. Lackey Jr./OMB/EOP, James F. Jordan/OMB/EOP, Andrea E. Jacobson/OMB/EOP
cc: See the distribution list at the bottom of this message
Subject: Revised Draft of Section 8 Homeownership Rule

Steve, Joe, Jim, Andrea,

Attached is a revised version of the Section 8 homeownership final rule, which reflects the changes discussed between OMB, DPC and HUD staff on June 23, 2000. All of the changes to the previous draft are highlighted in redline and strikeout.

Rod Solomon has been out of the office, and so has not had the opportunity to review these latest changes, and we are not certain if Gloria Cousar has had the opportunity to review these latest edits. However, their staffs have

reviewed the changes.

The attached draft has not been revised with respect to three issues raised by OMB/DPC. The reasons are as follows:

1. Reference to Joint HUD-Treasury Recommendations on Predatory Lending. OMB requested that the rule reference any prohibitions clearly defined in the joint HUD-Treasury report on predatory lending. HUD is currently developing preamble language to address this issue. HUD hopes to have this language finalized within the next few days. A note is imbedded in the attached draft that indicates where the language will be inserted.

2. Statutory definition of first-time homeowner. OMB asked if the statutory definition of a first-time homeowner would include a person who initially owns a home with a spouse, but later is living in the home alone and having to cover the homeownership costs by themselves. Specifically, the question raised is whether the displaced homemaker/single person eligibility provision would apply in a case where: (1) a person initially co-owned a home with a spouse but the spouse no longer owns the home; and (2) the person who is now the sole owner of the property wishes to receive voucher homeownership assistance.

The PHA may not deny first-time homebuyer assistance to a displaced homemaker or single parent because the person previously owned or co-owned a unit with a spouse. However, this law does not apply to the above scenario, because the person who is seeking the assistance ~~has been~~ and is presently the sole owner of the unit (even though the unit was previously owned or co-owned by the spouse).

3. Definition of "Welfare Assistance." OMB also questioned the effect of applying the part 5 definition of "welfare assistance" to the homeownership option. The 8(y) proposed rule added a definition of "public assistance" to

So let's change it -
we would give her a voucher if she was foreclosed & evicted. She would give the house away then.
maybe not → in divorce, perhaps, abandonment death - ?

§

982.4. This definition was restricted to the homeownership option, and provided a list of examples of public assistance. The proposed part 982 definition was: "Income assistance from Federal, state, or local welfare programs."

HUD drafted the final homeownership rule to remove the definition of "public assistance" from the 982 rule, and to instead incorporate by reference the definition of "welfare assistance" in the part 5 rule. This is consistent with the decision that common definitions for section 8 and public assistance be in part 5, but that program specific requirements be in each program rule. There is no substantive difference between the two definitions since the part 5.603 definition is: "Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments."

child support = income welfare

The part 5 definition of "welfare assistance" includes TANF assistance, TANF non-assistance, government-funded child care subsidies, food stamps, and Medicaid. It does not include earned income tax credits (EITC). Earned income disregards are not applicable to tenant-based section 8 families and are thus

why not?

①

②

not an issue.

Any further guidance on what is included in "welfare assistance" will be provided to PHAs through supplemental guidance such as a handbook or questions and answers.

(See attached file: 8(y) Revisions.doc)

 - 8(y) Revisions.doc

Message Copied To:

Rod Solomon <Rod_Solomon@HUD.GOV>
"Gloria J. Cousar" <Gloria_J._Cousar@HUD.GOV>
"Stephen I. Holmquist" <Stephen_I._Holmquist@HUD.GOV>
"Louise K. Hunt" <Louise_K._Hunt@HUD.GOV>
"Gerald J. Benoit" <Gerald_J._Benoit@HUD.GOV>
"Michael S. Dennis" <Michael_S._Dennis@HUD.GOV>
"Camille E. Acevedo" <Camille_E._Acevedo@HUD.GOV>

eligibility
payment?

what is the source - everybody knows
how std is it?



Margy Waller

07/06/2000 07:31:32 PM

.....

Record Type: Record

To: Joseph F. Lackey Jr./OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc: Records Management@EOP
Subject: Re: Electronic File for Proposed 8(y) homeownership rule 

I find the preamble very helpful. I think it should be added to the final rule, with necessary changes and deletions. There is a great deal of explanation that no one should have to go looking for - and it aids in understanding the program, etc.

Also - that is what we agreed to do in our earlier meeting.

Talk to you in the morning.
Ariel Pereira <Ariel_Pereira@HUD.GOV>



Ariel Pereira <Ariel_Pereira@HUD.GOV>

07/06/2000 05:53:25 PM

Record Type: Record

To: Margy Waller/OPD/EOP
cc: Rod Solomon <Rod_Solomon@HUD.GOV>, "Gerald J. Benoit" <Gerald_J._Benoit@HUD.GOV>, "Michael S. Dennis" <Michael_S._Dennis@HUD.GOV>, "Camille E. Acevedo" <Camille_E._Acevedo@HUD.GOV>
Subject: Electronic File for Proposed 8(y) homeownership rule

Margy:

As requested, attached is the electronic file for the Section 8 homeownership proposed rule (preamble and regulatory text). I hope this is helpful.

- Ariel

(See attached file: 4427PROP.doc)



- 4427PROP.doc

Joseph F. Lackey Jr.

07/06/2000 11:39:17 AM

Record Type: Record

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

cc:

Subject: Homeownership rule

Here is a list of items that are outstanding on the HUD homeownership rule. I have forwarded this document to HUD. I am hoping we can do a conference call with HUD--perhaps as early as this afternoon--to discuss and get this wrapped up.

Comments for Discussion -- Homeownership Rule -- 7/6/00

1. Page 3, line 8. We agreed to add the cited preamble language (from the proposed rule, providing additional details regarding the amendments to 24 CFR part 982, subpart M) here. (Reader friendly style.) *will amend.*

2. Page 12, line 12. Why would the PHA have to request regulatory relief for exemption from the 180 day termination provision? Is it statutory? Case-by-case relief seems odd in a rule where we are otherwise providing so much PHA discretion. And it seems like it would have a chilling effect. *local discretion*

3. Can this program be used for manufactured housing? Since equity buildup would not occur, how would this program work? *yes. mobile home too 10 years out*

4. "First-time homebuyer"--The definition could include a person who initially owns a home with another person (such as a spouse), but is later living in the home alone and having to cover the homeownership costs by themselves. Since such a person does not meet the displaced homemaker or single parent provision, HUD could create a new category of first-time homebuyer for this rule/program to include such a person. If we don't, s/he may lose the home and then be eligible for a rental voucher because she is homeless. *No*

5. Since welfare assistance includes TANF, TANF-non assistance, etc. is this explanation part of the 5.603 definition? If not, what is the citation for this further explanation? Why aren't earned income disregards applicable to tenant-based section 8 families? *will decide about whether the FSS rule will work.*

6. Suggestion for PHA financing/capacity issue: A PHA would not need any capacity review by HUD if it chose to set the following requirements for its homeownership program:

A minimum down payment requirement **of 3 percent of the purchase price with a requirement that at least 1 1/2 percent must be derived from the borrower's funds, and/or** Mortgage financing that is either federally-guaranteed (FHA, VA) or provided by a private conventional lender **with its own funds at risk and following private sector underwriting standards.**

→ predatory ^{and} language in the preamble.

Otherwise, the PHA must demonstrate the ability to operate a successful homeownership program. The PHA could demonstrate that capacity to HUD in various ways, including partnering with national or local groups who have previously demonstrated the capacity to operate a successful homeownership program for low-income families.

HUD must approve

7. Performance Measures/Monitoring the program: General language in the preamble to the rule would commit HUD to developing a performance standard for the program in the future and to monitoring the program with early intervention where mortgage defaults were too high (the definition of what is too high would be determined later)

Message Sent To:

James F. Jordan/OMB/EOP@EOP
Margy Waller/OPD/EOP@EOP
Lauren Larson/OMB/EOP@EOP
Andrea E. Jacobson/OMB/EOP@EOP
Adam Hoffberg/OMB/EOP@EOP

Mr. Lucas

New Jersey - ran a program

How do you get people in program

1) DP

2) Fannie Mae etc conventional/underwriting
std.

3) otherwise HUD has to review capacity

review & revoke?

would be aware of default

Jim →

12⁰⁰ -

Adam Hoffberg / Lauren



Margy Waller

07/05/2000 08:21:37 PM

.....

Record Type: Record

To: James F. Jordan/OMB/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc: Records Management@EOP
Subject: Re: Lucas/Redburn/Waller telephone agreement on the pending Homeownership Rule 

DPC comments on redline draft and other HUD responses:

p. 3, line 8. We agreed to add the cited preamble language (from the proposed rule, providing additional details regarding the amendments to 24 CFR part 982, subpart M) here. (Reader friendly style.)

p. 12, line 12. Why would the PHA have to request regulatory relief for exemption from the 180 day termination provision? Is it statutory? Case-by-case relief seems odd in a rule where we are otherwise providing so much PHA discretion. And it seems like it would have a chilling effect.

Definitions

First-time homebuyer

The definition could include a person who initially owns a home with another person (such as a spouse), but is later living in the home alone and having to cover the homeownership costs by themselves. Since such a person does not meet the displaced homemaker or single parent provision, HUD could create a new category of first-time homebuyer for this rule/program to include such a person. If we don't, s/he may lose the home and then be eligible for a rental voucher because she is homeless.

I noticed that veterans were not added as 'first-time homebuyers'. While we have no objection to dropping them from the definition - if they are going to be added, we are curious about why they are being added when no commenter suggested we do so. (Page 28, l. 22.)

Welfare Assistance

In the email explanation, Ariel explains that welfare assistance includes TANF, TANF non-assistance etc. Is this explanation part of the 5.603 definition? If not, what is the citation for this further explanation? Why aren't earned income disregards applicable to tenant-based section 8 families?

James F. Jordan

James F. Jordan



 07/05/2000 11:14:31 AM

Record Type: Record

To: Joseph F. Lackey Jr./OMB/EOP@EOP

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

Subject: Lucas/Redburn/Waller telephone agreement on the pending Homeownership Rule

On Monday, July 3rd, Mr. Lucas, Mr. Redburn and Ms. Waller discussed the proposed Homeownership Rule in a telephone conference call. They agreed on the financing/capacity issue and on HUD's development of a performance standard in the future for the voucher homeownership program. The agreement is laid out below. We have also added a few specifics **in bold and underscored** where necessary to properly define the requirement. Would you transmit these to Camille along with Ms. Waller's comments on other issues that are expected via e-mail on Wednesday. I will convert these policy agreements into specific language for the rule and preamble later today, and transmit them to you.

Topic: PHA financing/capacity issue.

A PHA would not need any capacity review by HUD if it chose to set the following requirements for its homeownership program:

- A minimum downpayment requirement **of 3 percent of the purchase price with a requirement that at least 1 1/2 percent must be derived from the borrower's funds**, and/or
- Mortgage financing that is either federally-guaranteed (FHA, **VA**) or provided by a private conventional lender **with its own funds at risk and following private sector underwriting standards**.

Otherwise, the PHA must demonstrate the ability to operate a successful homeownership program. The PHA could demonstrate that capacity to HUD in various ways, including partnering with a national or local groups who have previously demonstrated the capacity to operate a successful homeownership program for low-income families.

Topic: Performance Measures/Monitoring the program.

General language **in the preamble to the rule** would commit HUD to developing a performance standard for the program in the future and to monitoring the program with early intervention where mortgage defaults were too high (the definition of what is too high would be determined later)

Message Copied To: _____

Margy Waller/OPD/EOP@EOP
Francis S. Redburn/OMB/EOP@EOP
Lauren Larson/OMB/EOP@EOP
Andrea E. Jacobson/OMB/EOP@EOP
Lauren Larson/OMB/EOP@EOP

Message Copied To: _____

joseph f. lackey jr./omb/eop@eop
francis s. redburn/omb/eop@eop
lauren larson/omb/eop@eop
andrea e. jacobson/omb/eop@eop
Andrea Kane/OPD/EOP

6/27/00

Comments, Section 8 Homeownership Rule (Final)

We need to think very carefully about the incentives that PHAs, lenders, and low-income families will face under this program as currently presented:

- * Lenders are partly shielded from losses because families have a cushion to help them pay the rent; ceteris paribus, this weakens their incentives to underwrite carefully and to service delinquent loans aggressively.
- * Borrowers are protected from the worst consequences of default because they will continue to pay 30 percent of income whether they continue to be owners or default and again become renters. This weakens their incentive to continue paying the mortgage; and since they typically will have made small down payments and are subject in early years to equity recapture, they are likely to default at much higher rates than other borrowers.
- * PHAs are inexperienced in screening families for homeownership or qualifying lenders but may, in some cases, have an incentive to offer homeownership opportunities to the families they serve.

The goal of the new voucher for homeownership is to help rental voucher-holders become homeowners. This goal should be accomplished in a manner that continues the positive public image for HUD's voucher program. While that overarching goal is clear, the nature of the program is still unclear. Some view the new program as a standard homeownership program where the owner successfully funds for oneself with sweat equity and other measures to protect one's large financial interest. Others view it as non-standard homeownership program that may leave the "owner" with little financial self-interest and therefore needs more program oversight by the PHA. The final rule not only leaves this question open but it does clearly lean to either approach. Instead, it sets a few minimum requirements and relies on PHAs to do the rest.

We are nervous about this approach. If a PHA implements a narrow program with downpayment requirements from the homeowner's funds, the usual underwriting requirements by non-FHA lenders, and the usual pressures of community and financial self interest to maintain the property, then the program would have little risk but would produce few homeowners. If a PHA implements a broad program with little or no contribution of funds by the homeowner, leveraged CDBG or HOME funds from the city for the downpayment, lower interest loans or modified loan requirements by State or City or even PHAs, and more oversight by the PHA to assure maintenance of the property, then the program would involve substantial risk but would produce many more homeowners. The rule is loose enough to permit either model, or a mixture of models that could prove troublesome in terms of potential defaults with damage to the positive image of the voucher program.

If HUD sets only a few lower-bound requirements, how will the program be monitored to be sure potential problems are not arising? How quickly could HUD detect a problem and issue regulations to fix it? If monitoring is not feasible or desirable, then HUD may wish to set more rigid requirements to avoid possible future problems. PHAs might be allowed to vary from these requirements with approval from HUD field offices.

We suggest raising the standard requirements in a few areas to lower the risk of a failed homeownership program. In order to promote wider use of the program, HUD could approve non-standard programs at the PHA's request. Presumably, HUD would apply a loose approval standard for high-performing PHAs, especially those partnering with a lender or non-profit experienced in assisting first-time homebuyers, and a higher approval standard for poorly performing PHAs. The standard requirements could be raised as follows:

- * Add a sentence in the rule encouraging PHAs to require some downpayment funds from the homeowner or other equity participation (Habitat model of sweat equity).
- * Require private sector underwriting standards, or normal FHA underwriting standards if loans are federally guaranteed. For example, HUD could set and publish separate specific qualifying criteria for lender participation in local homeownership programs. These criteria could be parallel to the standards for lender eligibility for participation in federally guaranteed loan programs as spelled out in the newly revised Circular A-129, Appendix A.
- * If PHAs choose NOT to require #1 and 2, then the homeowner should have some risk of loss upon default (loss of good credit, loss of the rental subsidy by requiring the homeowner to reapply for a rental voucher unless the PHA determines the default was unavoidable by the homeowner). *define unavoidable*
- * If PHAs choose NOT to require #1 and 2, then they should be encouraged to partner with a qualified nonprofit organization that is experienced in screening and preparing low-income families for homeownership.
- * If PHAs choose NOT to do #1-4, then they must receive HUD approval for the homeownership program.

Besides the overarching question, here are some specific suggestions on the final rule or areas where we need further clarification:

HUD will draft changes to accommodate the above ↑ for our review
Definitions

1. Net family assets. The final rule adds a new definition of "net family assets" that excludes the value of a home purchased through the Section 8 homeownership program. This was not in the proposed rule. It should be deleted for the following reasons: (a) horizontal equity -- income from assets are assumed to accrue at a minimal savings rate for renters and the same should apply to homeowners; (b) bad precedent -- may lead to further loss of rental income through rule changes; (c) lowers incentive for turnover of vouchers-- makes it slightly more expensive to remain on HUD's rental subsidy roles and thus accelerates the transfer of the scarce voucher to another needy family; (c) anti-scandal provision -- a few voucher-holders will hopefully purchase a home that appreciates greatly, and, in such cases, the government subsidies should not continue on such homes in the 14th or 15th year, or longer. This change becomes more important the longer the term of subsidy, which could be the life of the tenant for an elderly or disable household.

start counting it at the 11th year?

2. **First time homeowner.** The final rule both tightens and loosens the definition of a first time homeowner. Why is someone who has not owned property in the last three years considered a first-time homeowner? Why not five or ten years? Why not make this definition identical to other HUD programs? For example, how does it differ from FHA programs or HOME programs? Page 72, loosens up requirements for a first time homeowner to exclude disabled and others who are designated by the PHA. Is this consistent with the definitions of first time homeowner for other HUD programs?
3. **Public Assistance.** The specific definition of public assistance in the rule has been replaced with a more general definition of welfare assistance. Is the term welfare defined further in an existing HUD Notice or handbook? If not, it may be misinterpreted?

Eligibility Criteria for Families

4. **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?
Add references → remove work to PHH
5. **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?
6. **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?
7. **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?
Clarify in the preamble

Income and Employment Requirements for Eligibility

8. **Minimum Income Requirement.** How did HUD determine 2,000 hours at the Federal minimum wage was an adequate minimum requirement? Suggest adding a sentence to explicitly state that PHAs may establish higher standards in accordance with the administrative plan. *NO*

9. **Minimum Income Requirement.** The earning test is now broadened to all adult family member who will own the home instead of the head of household or spouse. What happens if the one of the adults vacates? *front-end requirement only.*

10. **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?

they'll get back to us
no response

11. **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?

12. **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? *Policy is rewarding work.*

13. **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

14. **p. 8, l. 6** *they have to put it in the administrative plan.*
If the PHAs review lender qualifications case-by-case, rather than establishing standards at the outset, can similarly situated lenders be treated differently?

15. **p. 46** *prohibits list of qualitative descriptive factors* } *will look at this report*
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

16. **Family Obligations.** Why not strengthen the PHA by allowing termination of homeownership assistance for violations of the family obligations (page 87)? *PHA can do so*

17. **Penalties for default.** The rule permits PHAs to make exceptions to continue rental assistance for households that are "dispossessed from the home pursuant to a judgement order of foreclosure on any mortgage." Why have exceptions when a household refuses to vacate a property? *Because laws are different in different places.*

18. **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?

19. **p. 10, l. 32 and p. 58, l. 25** *preamble put something in the*
How do the portability provisions apply if participating PHAs have different standards for eligibility? *receiving for applies*

20. **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?

21. Should there be a work-move exception to the prohibition of continued assistance to a family with interest in a prior home?

22. Should the requirement that a family reside in the home to qualify for continued homeownership assistance accommodate emergency moves or job-related moves?

23. 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.

24. 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?

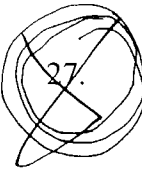
25. **p. 11, l. 19** *PHA discretion*

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?

26. **p. 12, l. 7**

Will the requirement that refinancing be subordinate to the recapture lien serve as a barrier to financing?

will fix.

 27. **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?

28. **Automatic termination of homeownership assistance.** The language about the termination of assistance after 180 days on page 10 and 92 is confusing.

Other

29. **Family Obligations.** Does the "One-strike, your out" and other "good behavior" terms of a lease apply to homeownership?

30. Should HUD **Housing Quality Standards** apply annually? How will HUD defend continuing to make mortgage subsidy payments on a home that is dilapidated?

31. **Homeownership counseling.** Should homeownership education and counseling provided to prospective buyers meet or be consistent with the national curricular guidelines and certification standards for HEC established by the American Homeownership Education and Counseling Institute, as determined either by the AHECI or by HUD or its designee?

32. **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?

 33. **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?

NO

reads friendly

34. **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?

35. **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?

Andrea Kane

Record Type: Record

To: Francis S. Redburn/OMB/EOP@EOP
cc: margy waller/opd/eop@eop, james f. jordan/omb/eop@eop, andrea e. jacobson/omb/eop@eop, joseph f. lackey jr./omb/eop@eop
bcc:
Subject: Re: Homeownership Vouchers Rule

Margy, I'd suggest we provide our comments to Steve, so they can be integrated with his group's comments. That way, we can resolve any intra-EOP differences before Joe sends to HUD. Steve/Joe, I concur with Steve's observation on timing - this is an important rule and it does not seem feasible to get it cleared in the next 2 days. Joe - I assume you'll relay to HUD that they should not announce anything about the rule until it's cleared (in other words, we shouldn't hear them making an announcement this week about the fact that they will soon be publishing the rule...as I recall from the deconcentration rule process, the groundrules were they couldn't talk about the rule until all the issues were resolved and I don't think we're there yet).

Francis S. Redburn

Francis S. Redburn

06/07/2000

08:29:16 AM

Record Type: Record

To: Margy Waller/OPD/EOP@EOP
cc: Andrea Kane/OPD/EOP@EOP, James F. Jordan/OMB/EOP@EOP, Andrea E. Jacobson/OMB/EOP@EOP, Joseph F. Lackey Jr./OMB/EOP@EOP
bcc:
Subject: Re: Homeownership Vouchers Rule

If you like, you can share your comments with us and we will work with Joe Lackey to integrate them with ours into a single passback. However, you should feel free, if your prefer, to give your comments separately to Joe or to HUD.

As a process, we prefer, when time permits, to work through the regulatory channel, i.e., through Joe and back through Camille Acevedo and Ariel Pereira to the program office.

Joe, I think we should advise HUD today that this isn't going to be cleared during National Homeownership Week.

Margy Waller



Margy Waller

06/06/2000 09:09:28 PM

.....

Record Type: Record

To: Francis S. Redburn/OMB/EOP@EOP
cc: Andrea Kane/OPD/EOP
bcc:
Subject: Re: Homeownership Vouchers Rule 

Steve:

Thanks for this thoughtful set of comments. We are also struggling with how to balance things on this one. Making sure that the program is used by low-income families, but not poorly. We want a program that is successful because people use it - but not people who will fail in the program.

What do you see as the next steps here? I am working on a more comprehensive set of comments from Andrea and me.

- Margy
Francis S. Redburn

Francis S. Redburn  06/06/2000
10:01:10 AM

Record Type: Record

To: James F. Jordan/OMB/EOP@EOP, Andrea E. Jacobson/OMB/EOP@EOP
cc: Margy Waller/OPD/EOP@EOP, Joseph F. Lackey Jr./OMB/EOP@EOP
Subject: Homeownership Vouchers Rule

I spoke to Doug Kantor late yesterday and gave him a progress report on our review of this rule. I told him that we had flagged one issue that needed more work but may surface other issues as we read the rule and that we would have a better sense of timing sometime Wednesday. He is casting about for an alternative announcement in case we are not ready to clear the rule this week.

We need to think very carefully about the incentives that PHAs, lenders, and low-income families will face under this program as currently presented:

- Lenders are partly shielded from losses because families have a cushion to help them pay the rent; ceteris paribus, this weakens their incentives to underwrite carefully and to service delinquent loans aggressively.
- Borrowers are protected from the worst consequences of default because they will continue to pay 30 percent of income whether they continue to be owners or default and again become renters. This weakens their incentive to continue paying the mortgage; and since they have typically will have made small down payments and are subject in early years to equity recapture, they are likely to default at much higher rates than other borrowers.
- PHAs are inexperienced in screening families for homeownership or qualifying lenders but may, in some cases, have an incentive to offer homeownership opportunities to the families they serve.

Possible ways to address these structural problems include:

- Asking HUD to set and publish separate specific qualifying criteria for lender participation in local homeownership programs. These criteria could be parallel to the standards for lender eligibility for participation in federally guaranteed loan programs as spelled out in the newly revised Circular A-129,

Appendix A.

- Requiring in the rule that PHAs partner with a qualified nonprofit organization that is experienced in screening and preparing low-income families for homeownership, including the national network of Neighborworks organizations overseen by the Neighborhood Reinvestment Corporation; and spelling out in the rule the tasks that these organizations would perform for the PHA, including screening and qualifying the families.
- That homeownership education and counseling provided to prospective buyers meet or be consistent with the national curricular guidelines and certification standards for HEC established by the American Homeownership Education and Counseling Institute, as determined either by the AHECI or by HUD or its designee.
- Either specifying minimum underwriting standards in the rule, e.g., FHA as in the proposed rule, or providing a process by which underwriting standards would be set, e.g., qualifying lenders specify standards and these are reviewed in turn by the partnering nonprofit.

Margy
lang. — the
13 on p. 2
— CH

§ 5.603

24 CFR Subtitle A (4-1-99 Edition)

(ii) Section 5.615 (Utility reimbursement) and the definition of *utility reimbursement* found in § 5.603 also do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

(iii) Section 5.607 (Income limits for admission) does not apply to the Section 8 Rental Voucher and Rental Certificate Programs.

(3) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)).

(b) This subpart does not apply to HUD's Indian housing programs. The analogous rule that applies to Indian housing is located at 24 CFR part 950.

§ 5.603 Definitions.

As used in this subpart:

(a) The terms *elderly person*, *low-income family*, *person with disabilities*, *State*, and *very low-income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

(b) The terms *1937 Act* and *public housing agency (PHA)* are defined in § 5.100.

(c) The terms *disabled family*, *elderly family*, *family*, and *live-in aide* are defined in § 5.403.

(d) The following terms shall have the meanings set forth below:

Adjusted income. See § 5.611.

Annual income. See § 5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster

adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under § 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market

Office of the Secretary, HUD

§ 5.607

value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appropriate, the term "owner" shall also include a "borrower" as defined in 24 CFR part 885.

Tenant rent. The amount payable monthly by the family as rent to the PHA or owner, as applicable. Where all utilities (except telephone) and other essential housing services are supplied by the PHA or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the PHA or owner and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

Total tenant payment. See § 5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

§ 5.605 Overall income eligibility for assistance.

No family other than a low-income family shall be eligible for admission to a program covered by this part.

§ 5.607 Income limits for admission.

(a) *General*—(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the dwelling units that were available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by low-income families other than very low-income families. HUD reserves the right to limit the admission of low-income families other than very low-income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (b) and (c) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(b) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (a)(2) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(i) *For Section 8 Programs.* (i) Low-income families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(ii) Low-income families that are displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act (42 U.S.C. 1437o), or as a result of activities under the Rental Rehabilitation Demonstration Program;

► **Margy Waller**
07/17/2000 12:45:34 PM
.....

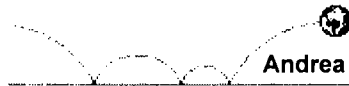
Record Type: Record

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

In addition:

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

Andrea E. Jacobson

 **Andrea E. Jacobson** 07/17/2000 12:18:12 PM 

Record Type: Record

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

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

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

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

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

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

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

5. (p. 17, line 10) The number 8 is missing after the word "Section."

6. (p. 50-51) Perhaps the predatory lending discussion can be summarized, stressing that HUD will revise this rule as appropriate to respond to the HUD-Treasury report, and repeated again before or after section VII of the preamble. I am concerned it will be buried in the public comment section and not seen. Don't we usually highlight intended future actions?

7. (p. 84, line 10) Change "its" to "it."

Message Copied To:

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