

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 982

[Docket No. FR-4670-F-02]

RIN 2577-AC28

**Section 8 Homeownership Program:
Downpayment Assistance Grants and
Streamlining Amendments**

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

ACTION: Final rule.

SUMMARY: This final rule implements section 301 of the American Homeownership and Economic Opportunity Act of 2000, which amends the "homeownership option" under the Housing Choice Voucher Program. Under section 301, a Public Housing Agency (PHA) may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Implementation of these downpayment assistance grants is anticipated for Federal Fiscal Year 2003. In addition to implementation of section 301, this final rule also clarifies and streamlines several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option. This final rule follows publication of a June 13, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: November 18, 2002.

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

SUPPLEMENTARY INFORMATION:

I. Background—HUD's June 13, 2001, Proposed Rule

On June 13, 2001 (66 FR 32198), HUD published a proposed rule for public comment to implement section 301 of the American Homeownership and Economic Opportunity Act of 2000 (Pub.L. 106-569, 114 Stat. 2944, 2952, approved December 27, 2000) (AHEOA).

Section 301 amends the "homeownership option" authorized under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437f(y)) (1937 Act). Under the section 8(y) homeownership option, a public housing agency (PHA) may choose to provide monthly tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. Section 301 amends section 8(y) to authorize an alternative form of assistance under the homeownership option—assistance in the form of a single downpayment assistance grant. Under section 301, a PHA may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Implementation of these downpayment assistance grants is anticipated for Federal Fiscal Year 2003.

In addition to implementation of downpayment assistance grants, HUD also proposed to clarify and streamline several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option. Specifically, HUD proposed to:

- (1) Provide PHAs with the flexibility to establish a higher minimum income standard than the uniform national requirement described in the current regulations;
- (2) Explicitly reference the eligibility of manufactured homes for purchase under the homeownership option; and
- (3) Remove the requirements providing for the recapture of homeownership assistance upon the sale or refinancing of the home.

In addition to these three changes, HUD also announced that it was considering the feasibility of permitting the purchase of new homes not yet under construction under the homeownership option. The preamble to the June 13, 2001, proposed rule provides additional details regarding the proposed changes to HUD's homeownership option regulations.

II. Significant Changes to June 13, 2001, Proposed Rule

This final rule follows publication of the June 13, 2001, proposed rule, and takes into consideration the public comments received on the proposed rule. The most significant differences between this final rule and the June 13, 2001, proposed rule are as follows:

*A. Changes to Implementation of
Downpayment Assistance Grants*

1. *Payment of reasonable and customary closing costs with downpayment grant.* This final rule authorizes the use of a downpayment grant for the payment of reasonable and customary closing costs. If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs by providing such a definition in its administrative plan. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of the homeownership option regulations regarding the applicability of FHA requirements to voucher homeownership assistance and 24 CFR 203.27 regarding allowable fees, charges and discounts for FHA-insured mortgages).

2. *Limitation on eligibility to current voucher families.* This final rule continues to limit eligibility for downpayment assistance grants to current voucher families. The final rule, however, no longer requires that a family must have been receiving tenant-based voucher rental assistance for a specific time period in order to qualify for a downpayment grant. The proposed rule would have mandated a one-year period of prior voucher rental assistance.

3. *Administrative fee.* This final rule announces that the single, one-time administrative fee for a downpayment assistance grant will initially be set at an amount equal to six months of the PHA's on-going regular administrative fee under the voucher program.

4. *Return to tenant-based assistance.* The final rule permits a family to apply for and receive tenant-based rental assistance after receiving a downpayment grant, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any family member owns any title or other interest in the home purchased with homeownership assistance. Further, 18 months must have passed since the family's receipt of the downpayment assistance grant.

5. *Implementation of downpayment assistance grants.* This final rule clarifies that a PHA may not offer downpayment assistance grants until HUD publishes a notice in the **Federal Register** announcing that appropriated funds are available for this use.

B. Other Changes to Homeownership Option

1. *Family choice of housing.* This final rule makes a non-substantive clarification to § 982.601(d) of the Housing Choice Voucher Program regulations concerning a family's ability to choose among the special housing types permitted under the program (including the homeownership option). The current wording of the provision refers to a family's choice to "rent" housing, which may lead to the incorrect conclusion that the provisions concerning family choice do not apply to home purchases under the homeownership option. Accordingly, the final rule replaces the word "rent" in this section with the more inclusive word "use." This change does not alter any existing regulatory requirements, but merely clarifies that a family's ability to choose among the various forms of assistance offered under the voucher program also includes voucher homeownership assistance.

2. *Future receipt of homeownership assistance.* This final rule provides that only adult family members are subject to the restrictions on the future receipt of homeownership assistance. Specifically, a family that includes an individual who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA. Further, a PHA may not provide homeownership assistance for a family if any member was an adult member of a family at the time such family received assistance under the homeownership option and defaulted on the mortgage securing purchase of the home.

3. *Clarification of reasonable accommodation requirement.* Consistent with previous HUD guidance, this final rule clarifies that it is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to provide homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

4. *Removal of recapture provisions.* This final rule adopts the proposal to remove the recapture provisions contained in the June 13, 2001, proposed rule. In addition, this final

rule provides that a PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option. This change will ensure that families who purchased their homes prior to issuance of this final rule also receive the benefit provided by removal of the onerous recapture requirements.

5. *Inclusion of welfare assistance in determining whether elderly and disabled families meet the minimum income requirement.* This final rule clarifies that, in determining whether an elderly or disabled family meets the minimum income requirement, welfare assistance shall be included only for those adult elderly or disabled family members who will own the home.

6. *Revised minimum income standard for disabled families.* This final rule adopts the revisions to the minimum income requirements contained in the June 13, 2001, proposed rule. Specifically, the final rule permits a PHA to establish a higher minimum income standard than the uniform national standard described in the homeownership option regulations. However, the final rule establishes a separate national standard for disabled families. This minimum income standard for such families will be equal to the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve.

PHAs will have the flexibility to establish a higher income standard for either or both types of families (disabled and non-disabled). However, as described in the proposed rule, a family that meets the applicable HUD minimum income requirement, but not the higher standard established by the PHA, shall be considered to satisfy the minimum income requirement if the family is able to demonstrate that it has been pre-qualified or pre-approved for financing. The pre-qualified or pre-approved financing must meet any PHA established requirements for financing the purchase of the home (including qualifications of lenders and terms of financing). The pre-qualified or pre-approved financing amount must be sufficient to purchase housing that meets housing quality standards in the PHA's jurisdiction.

7. *Timing of new construction.* After careful consideration of all the issues regarding the eligibility of units not yet under construction, HUD, at this time, is not prepared to authorize the purchase of such units with voucher homeownership assistance. However, in

order to expand a family's homeownership choices, the final rule provides that a unit need only be under construction at the time the family enters into the contract of sale—and not at the time the PHA determines the family is eligible for homeownership assistance to purchase the unit, as is currently required by the regulations.

8. *Eligibility of housing where the family will not also own fee title to the real property on which the home is located.* The final rule expands the types of housing eligible for purchase under the homeownership option to include any housing where the family will not also own fee title to the real property on which the home is located. Further, in order to effectuate this change, the final rule revises the list of homeownership expenses to include land lease payments. However, the family must have the right to occupy the site for a period of at least forty years and the home must have a permanent foundation. The right of occupancy period has been increased to forty years (from the proposed thirty year period) to conform to FHA mortgage insurance requirements and manufactured home lending industry practice.

9. *PHA disapproval of seller.* This final rule clarifies that a PHA, in its administrative discretion, may deny approval of a seller for any reason provided for disapproval of an owner under the voucher rental program regulations (see § 982.306(c)). These reasons include: violations of the housing assistance payments (HAP) contract; committing fraud; bribery; or any other corrupt or criminal acts in connection with any Federal housing program; engaging in drug-related or violent criminal activity; non-compliance with HUD's housing quality standards (HQS); failing to meet State or local housing codes; and failure to pay State or local real estate taxes, fines, or assessments. The current regulatory language is unclear as to whether PHAs have the authority to prohibit sellers who engage in these disreputable activities from participating in the homeownership option. This final rule closes this "loophole" by specifying that the PHA disapproval provisions of § 982.306(c) apply to both the rental and homeownership components of the voucher program.

III. Discussion of Public Comments Received on the June 13, 2001, Proposed Rule

The public comment period on the proposed rule closed on August 13, 2001. HUD received twenty-seven comments on the proposed rule. Comments were received from: PHAs;

advocates of low-income housing; legal services providers; national associations representing realtors, home builders, and mortgage bankers; state and local housing services and community development agencies; a housing subsidy recipient; Fannie Mae; the United States Department of Agriculture-Rural Housing Service; and other commenters.

The following section of the preamble presents a summary of the significant issues raised by the public commenters on the proposed rule, and HUD's responses to these issues.

The summary of public comments is organized as follows:

Section IV of the preamble discusses the public comments regarding the implementation of downpayment assistance grants.

Section V of the preamble discusses the public comments regarding the proposed streamlining and clarifying amendments to the homeownership option.

Section VI of the preamble discusses other public comments received on the proposed rule.

IV. Discussion of Public Comments Regarding the Implementation of Downpayment Assistance Grants

A. Comments Regarding Types of Homeownership Assistance Offered by PHA

Comment: A PHA that offers downpayment assistance grants should be required to clarify to the potential homebuyer the benefits of each option. Several commenters wrote that it is important that any potential participants have full knowledge of the advantages and disadvantages of each type of homeownership assistance. The commenters wrote that those families who are considering giving up their tenant-based rental assistance to receive a downpayment grant particularly should be made aware of all anticipated costs and requirements that go along with homeownership and the financial risks that may result from termination of their voucher rental assistance.

HUD Response. HUD agrees that families should be made fully aware of the benefits and disadvantages associated with each type of homeownership assistance. Before the commencement of either form of homeownership assistance, families are already required to satisfactorily complete the pre-assistance homeownership counseling offered by the PHA (see § 982.630). The regulation at § 982.630 identifies several suggested topics for inclusion in the pre-assistance counseling, and provides PHAs with the

flexibility to adapt the subjects covered in the counseling to local circumstances and the needs of individual families. HUD encourages all PHAs who offer both forms of homeownership assistance to explain to applicants in the pre-assistance counseling how both forms of assistance work, and the benefits of each type of homeownership assistance. However, HUD continues to believe that the topics to be covered in counseling should be selected by the individual PHAs, who are in the best position to determine the counseling needs of families within their respective jurisdictions. Accordingly, HUD has not revised the proposed rule to adopt the suggestions made by the commenters.

Comment: A PHA that offers downpayment assistance grants should be required to also offer monthly homeownership assistance payments. Several commenters wrote that downpayment assistance carries substantial economic risks for families, since they will be forfeiting monthly homeownership assistance payments in exchange for a single downpayment grant. The commenters wrote that for many potential participants, the major obstacle to homeownership might be the ability to make monthly payments and not insufficient funds for a downpayment. However, PHAs may prefer to offer downpayment grants because they present less administrative burden than monthly homeownership assistance payments. The commenters suggested that PHAs who offer downpayment assistance should be required (or at a minimum encouraged) to also offer monthly homeownership assistance payments.

HUD Response. HUD does not believe it has the statutory authority to impose the requirement suggested by the commenter. Section 8(y) of the 1937 Act clearly gives individual PHAs the discretion to decide whether they will offer homeownership assistance and, if so, whether one or both forms of assistance will be made available by the PHA. Additionally, mandating that PHAs offer both types of assistance might have the negative consequence of discouraging some PHAs from offering any form of voucher homeownership assistance.

Comment: Support for PHA discretion to offer homeownership assistance. One commenter supported granting PHAs the flexibility to offer either or both types of homeownership assistance.

HUD Response. HUD agrees with the commenter. As noted above, section 8(y) of the 1937 Act makes the determination of whether to offer voucher homeownership assistance a local PHA decision.

B. Comments Regarding Eligibility for Downpayment Assistance

Comment: Support for restricting eligibility to current program participants. Several commenters supported limiting eligibility for downpayment assistance grants to current participants in the tenant-based voucher program. The commenters wrote that the proposal is consistent with the legislative history of section 301, and prevents transforming the voucher program into a short-term downpayment assistance program.

HUD Response. HUD agrees with the commenters, and the final rule continues to limit eligibility for downpayment assistance to current voucher families. Upon re-consideration, however, HUD believes that mandating at least one year of prior voucher rental assistance may be unduly prescriptive and unnecessarily delay the ability of families to move "up and out" and become homeowners. Further, eliminating the one-year requirement will facilitate lease-purchase transactions where the family is entitled to purchase a home it is leasing. Accordingly, the final rule no longer requires that a family must have been receiving tenant-based voucher rental assistance for a specific amount of time in order to qualify for a downpayment assistance grant.

In most PHA jurisdictions, the initial lease term for a family participating in the voucher rental program is one year (see § 982.309). The change regarding the amount a time a family must be receiving voucher rental assistance in order to qualify for a downpayment grant does not override the initial lease term requirements of § 982.309, or the family obligation to comply with the terms of the lease (§ 982.551(e)). Neither does it override any PHA administrative policy restricting moves by the family during the initial lease term. Rather, one of the goals of the change is to facilitate use of a downpayment grant where there is mutual agreement between the family and the owner to terminate the lease prior to the end of the initial term.

Comment: Proposed eligibility restriction should not apply to disabled families requesting a reasonable accommodation. One commenter wrote that eligibility for downpayment assistance should include individuals with disabilities requesting a reasonable accommodation, regardless of the length of time they have been receiving tenant-based voucher rental assistance.

HUD Response. As noted above, this final rule no longer requires that a family have been receiving tenant-based voucher rental assistance for a specific

amount of time in order to qualify for downpayment assistance. Further, the homeownership option contains several special provisions for families with a member who is a person with disabilities. For example, there is no maximum term of homeownership assistance for disabled families (assistance to other families is limited to a fifteen or ten-year term) (see § 982.634). As described elsewhere in this preamble, the final rule establishes a separate, lower national minimum income standard for disabled families (see § 982.627(c)(1)). The PHA is also required to count welfare assistance provided to the disabled family for purposes of determining whether the family satisfies the minimum income requirements (generally, such assistance is not counted for other families) (see § 982.627(c)(2)). In addition, if a PHA determines that a disabled family requires homeownership assistance as a reasonable accommodation, the first-time homeowner requirement does not apply (§ 982.627(b)). Further, on June 22, 2001 (66 FR 33610), HUD published an interim rule implementing the pilot program authorized by section 302 of AHEOA. This pilot program provides disabled families with certain additional benefits under the homeownership option (see § 982.642).

C. Comments Regarding Maximum Amount of Downpayment Grant

Comment: Maximum amount of downpayment grant is insufficient. Three commenters wrote that basing the maximum amount of the downpayment grant on a single year's worth of homeownership assistance payments will benefit only a small number of families, particularly in expensive markets such as New York City. One of the commenters recommended that the final rule either establish a minimum downpayment grant amount (the commenter suggested \$3,000) or base the maximum grant amount on a longer time period of subsidy assistance (the commenter suggested 5 years). A second commenter agreed that the time period for determining the maximum grant amount should be extended, and suggested a 5–10 year period.

HUD Response. HUD does not have the statutory authority to make the change suggested by the commenter. The maximum amount of the downpayment grant is established by section 301 of AHEOA. Specifically, the statute provides that “[t]he amount of the downpayment grant * * * may not exceed the amount that is equal to the sum of the assistance payments that would be made during the first year of assistance on behalf of the family * * *

Comment: The payment standard of the initial PHA should always be used to calculate the maximum downpayment grant. One commenter made this suggestion. The commenter wrote that this requirement appears to impose an unnecessary burden upon the family and the receiving PHA, and may deny homeownership assistance to a deserving family if the receiving PHA does not offer downpayment assistance grants. The commenter urged HUD to require that the policies and procedures of the initial PHA must be used for determining the maximum downpayment grant, regardless of where the property being purchased is located.

HUD Response. HUD does not agree with the commenter. HUD believes the portability requirements should be the same for both monthly homeownership assistance payments and downpayment assistance grants. A family determined eligible for either form of homeownership assistance may purchase a unit outside of the initial PHA's jurisdiction if the receiving PHA is administering a homeownership program and is accepting new homeownership families (see § 982.636).

D. Comments Regarding Use of Downpayment Grant

Comment: HUD should permit the use of downpayment assistance to cover closing costs. Several commenters wrote that closing costs can be substantial, typically amounting to two or three percent of the purchase of the home. Accordingly, the commenters suggested that the final rule authorize the use of downpayment grant funds to cover such costs.

HUD Response. Upon reconsideration of this issue, HUD has revised the rule to allow the use of a downpayment grant for the payment of reasonable and customary closing costs. HUD has determined that permitting families the option of using a downpayment assistance grant to cover such costs will facilitate homeownership. If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs by providing such a definition in its administrative plan. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of the homeownership option regulations regarding the applicability of FHA requirements to voucher homeownership assistance and 24 CFR 203.27 regarding allowable fees,

charges, and discounts for FHA-insured mortgages).

E. Comments Regarding Administrative Fee

Comment: HUD should either provide a one-time administrative fee for both types of homeownership assistance or no fee at all. Several commenters wrote that the effect of the one-time administrative fee would be to provide an unfair “bonus” to PHAs offering downpayment assistance grants. The commenters wrote that a PHA that provides a downpayment grant would receive the one-time administrative fee, as well as “freeing-up” a voucher for use by another family. The PHA will collect an ongoing administrative fee for this “freed-up” voucher. The commenters wrote that HUD does not provide a similar one-time administrative fee to PHAs offering the existing homeownership option. Accordingly, PHAs will prefer to offer downpayment assistance grants rather than monthly homeownership assistance payments. Since downpayment grants will primarily benefit higher-income Section 8 families, the commenters wrote that the proposed administrative fee may unfairly penalize lower-income families who might benefit from monthly homeownership assistance payments. The commenters recommended that HUD either provide a one-time administrative fee for the administration of both types of homeownership assistance—or provide no one-time fee at all.

HUD Response. HUD has not revised the proposed rule in response to these comments. The administrative fee is a one-time fee paid to compensate PHAs for the administration of downpayment assistance grants. This administrative fee is paid in lieu of the monthly fee a PHA would receive for the administration of other forms of voucher assistance. The single, one-time fee should not be construed as a “bonus” to PHAs for providing downpayment assistance. Further, HUD disagrees with the commenters that no fee should be paid for the administration of downpayment assistance grants. PHAs providing downpayment assistance grants require compensation for the staff work associated with counseling and other administrative actions in connection with such grants.

Comment: Administrative fee is inadequate. Several commenters objected that the proposed one-time administrative fee of \$250 is too low to adequately compensate PHAs for the administration of downpayment grants. The commenters wrote that the low

administrative fee will make downpayment assistance an unattractive option for PHAs, who will prefer to use their voucher funding to provide monthly tenant-based assistance and earn the higher administrative fee. Two commenters wrote that given the widely varying costs experienced by PHAs in different geographical locations, a flexible administrative fee would be more appropriate than the flat nationwide fee proposed by HUD. The commenter recommended an administrative fee equal to six months of a PHA's regular administrative fee. The commenters wrote that such a fee would be simple to administer and reflect the varying cost structures of PHAs.

HUD Response. Upon reconsideration, HUD agrees that the proposed \$250 administrative fee did not reflect geographic cost differences between PHAs. Through publication of this final rule, HUD announces that the administrative fee is initially set at an amount equal to six months of a PHA's on-going regular administrative fee (see § 982.152(b) of the Housing Choice Voucher program regulations). HUD will monitor the adequacy of this fee amount and will make adjustments as necessary. As is standard practice, any updates to the administrative fee amount will be announced through HUD notice.

F. Comments Regarding Return to Tenant-Based Assistance

Comment: Final rule should permit a family to return to tenant-based assistance after receiving a downpayment assistance grant. Two commenters wrote that a family that receives monthly homeownership assistance payments may elect to move with continued voucher tenant-based assistance (see § 982.637). However, the June 13, 2001, proposed rule does not provide a similar safety net to a family selecting a one-time downpayment assistance grant. The commenters wrote that households receiving Section 8 assistance, even at the higher end of the income spectrum, are financially vulnerable and subject to personal and economic hardship. Thus, a household that is well qualified for downpayment assistance initially may find itself in a difficult financial situation one or more years down the road due to a loss of employment, illness, or death. The commenters wrote that it would be unduly harsh to prohibit such a family from returning to voucher rental assistance simply because it elected to receive a one-time downpayment grant. One of the commenters wrote that if disqualification is sought, a more equitable approach would be to

disqualify participating households from receiving tenant-based assistance for a period equivalent to the number of months used to calculate the amount of the downpayment assistance grant. The other commenter suggested that, at a minimum, a family should be allowed to return to voucher rental assistance within 18 months following the downpayment assistance grant.

HUD Response. HUD agrees with the commenters that families receiving a downpayment grant should be permitted to return to tenant-based rental assistance under certain circumstances. This final rule permits a family that has received a one-time downpayment assistance grant to apply for, and receive, tenant-based rental assistance in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any family member owns any title or other interest in the home purchased with homeownership assistance. Further, 18 months must have passed since the family's receipt of the downpayment assistance grant.

G. Comments Regarding Voucher Renewals

Comment: Voucher renewal policy for downpayment grants is unclear and may be inequitable. Two commenters expressed uncertainty regarding the voucher renewal policy for downpayment grants announced in the June 13, 2001, proposed rule. The commenters requested clarification on whether downpayment grants are required to be funded from PHA reserves. The commenters noted that if a PHA uses reserves to assist additional families, it is not entitled to HUD reimbursement. The commenters wrote that such a voucher renewal policy would be inequitable and discourage PHAs from offering downpayment assistance grants.

HUD Response. HUD intends to issue further non-regulatory guidance on renewal funding in the near future.

H. Miscellaneous Comments Regarding Downpayment Grants

Comment: HUD should require PHAs to take an active role in ensuring the long-term success of participating families. One commenter wrote that, although the PHA's involvement with the family ceases once the downpayment grant is made, the PHA remains in the important position of being the family's sole safety net if mortgage and maintenance expenses prove to be unaffordable. According to the commenter, the PHA is also the last

line of defense in preventing a predatory lender from encouraging the family to move into homeownership. For these reasons, the commenter suggested that HUD require PHAs to review the participant's financing, sales contract, appraisal, and any other documents deemed necessary by the PHA. In this manner, the PHA can ensure that the sales price of the home and the monthly mortgage payments are affordable and the borrower is not subject to abusive loan terms or predatory lending. The commenter also requested that HUD clarify that new homeowners receiving a downpayment grant are required to complete all required pre-purchase homeownership counseling and must obtain the required home inspections (with approval by the PHA) prior to obtaining the grant. The commenter wrote that HUD should consider reporting requirements, perhaps through the Section 8 Management Assessment Program (SEMAP), that would enable HUD to ensure that the PHA has adopted all necessary safeguards under the homeownership option.

HUD Response. HUD has not adopted the suggestions made by the commenter. HUD agrees that families receiving downpayment grants should be protected from entering into unaffordable financing arrangements and from abusive lending practices. However, HUD does not believe that additional regulatory requirements are necessary to accomplish these goals. Many of the regulatory protections afforded to families receiving monthly homeownership assistance payments also apply to downpayment grants. For example, families receiving a downpayment grant must participate in pre-assistance counseling, and a PHA may establish requirements for financing purchase of the home. Although PHA involvement with the family ends once the downpayment grant is provided, HUD expects that PHAs will undertake the same efforts to ensure that financing requirements are appropriate for a downpayment grant as they would for monthly homeownership assistance payments. PHAs are encouraged to review lender qualifications and the loan terms before authorizing a downpayment grant. PHAs should disapprove proposed financing if the PHA determines that the debt is unaffordable or the lender or the loan terms do not meet PHA qualifications.

Comment: Downpayment assistance option needs to be included in the PHA Plan template. One commenter wrote that the homeownership component of the PHA Annual and Five-Year Plan template needs to be revised to include

downpayment grants along with monthly homeownership assistance payments. The commenter suggested that PHAs should be required to identify whether they offer downpayment grants in addition to monthly homeownership assistance payments, and their reasons for offering downpayment assistance. The commenter wrote that including downpayment assistance grants in the template will better ensure that PHAs, potential participants, lenders, and others better understand the program and all of its ramifications in advance.

HUD Response. HUD intends to address downpayment grants through future amendments to the PHA Plan instructions.

Comment: Downpayment grants will unnecessarily divert scarce voucher subsidy to higher-income families. One commenter wrote that downpayment assistance grants will principally benefit higher-income families who can afford monthly mortgage payments. The commenter wrote that the proposed rule would, therefore, "have very minimal impact on [lower-income] voucher recipients who may wish to become homeowners." The commenter also wrote that there are already several available downpayment assistance resources available to voucher families, such as HOME program funds, the Federal Home Loan Bank, state housing finance authority funds, and other state housing funds. The commenter suggested that PHAs work with their respective state housing and finance agencies, lending institutions, and local nonprofits to identify and develop downpayment assistance resources rather than using valuable voucher assistance for this purpose.

HUD Response. HUD does not agree with the commenter. Downpayment assistance grants are statutorily authorized by section 8(y). The statutory language makes clear that the provision of such assistance is solely at the discretion of individual PHAs. The PHA is in the best position to assess the availability and amount of other housing resources in its community and determine whether it is appropriate to offer downpayment assistance grants. Further, since a family provided a downpayment grant will no longer receive monthly rental assistance, implementation of this program will "free up" resources to assist additional families on the PHA waiting list.

V. Discussion of Public Comments Regarding Streamlining and Clarifying Amendments to Homeownership Option

A. Comments Regarding Minimum Income Requirements

Comment: Support for proposed minimum income revisions. Several commenters expressed support for the proposed revisions to the minimum income requirements. The commenter wrote that the flexibility provided by the proposed rule is both welcome and necessary. According to the commenters, the current minimum income requirement is well below the amount necessary to purchase in many areas, and raises false hopes in voucher families desiring homeownership. The commenters also wrote that allowing PHAs to establish minimum income requirements that more accurately reflect local housing costs will encourage lender participation.

HUD Response. HUD appreciates the support expressed by the commenters. HUD agrees that increased flexibility is necessary to allow successful PHA implementation of the homeownership option. This final rule adopts the proposed changes granting PHAs the flexibility to establish a higher minimum income standard that more accurately reflects local housing costs.

Comment: PHAs should have increased flexibility in establishing minimum income standards, especially for elderly and disabled families. Several commenters made this suggestion. The commenters wrote that, in at least some areas of the country, the current minimum income standard is already too high, especially for the elderly, persons with disabilities, and others living on fixed incomes or government benefits. The commenters wrote that lower income families are good candidates to purchase homes due to favorable underwriting standards employed by lenders and the secondary market, are also often able to take advantage of existing local affordable housing programs. The commenters wrote that although HUD may provide guidance for the determination of the minimum income requirement, ultimately the PHA should define the minimum income amount that will be required under the PHA's program.

HUD Response. HUD agrees that the current uniform national minimum income standard is too high for disabled families in some areas of the country. Accordingly, this final rule establishes a separate national standard for such families equal to the monthly Federal SSI benefit for an individual living alone (or paying his or her share of food

and housing costs) multiplied by twelve.¹ HUD agrees that there are a number of loan products and grant programs tailored for disabled families that, when combined with voucher homeownership assistance, would allow families below the current minimum income standard to successfully purchase a home. The new national standard for disabled families is based on the SSI benefit, since most families who will benefit from this change will be receiving such assistance.

HUD also continues to believe that the current income standard may be too low for certain high-cost areas of the country. The minimum income requirement is included in section 8(y), and is intended to ensure that families participating in the program have sufficient resources to meet their monthly mortgage payments and other ongoing homeownership obligations (such as real estate taxes, repairs, and other maintenance costs). HUD agrees with the commenters that PHAs are in the best position to establish a standard that accurately reflects local housing conditions, while ensuring compliance with the statutory goal of ensuring that families participating in the homeownership option have a satisfactory minimum amount of income. Accordingly, consistent with the June 13, 2001, proposed rule, this final rule permits a PHA to establish a higher minimum income standard than the uniform national standard for either or both types of families (disabled and non-disabled). Although HUD believes that PHAs should have the flexibility to tailor the minimum income standard to local housing conditions, it also wants to make sure that PHA-established income limits do not hinder use of the homeownership option by families who can qualify for a mortgage from a reputable lending institution. Accordingly, as described in the proposed rule, a family that meets the applicable HUD minimum income requirement, but not the higher PHA-specific income standard shall be considered to satisfy the minimum income requirement if the family is able to demonstrate that it has been pre-qualified or pre-approved for financing. The pre-qualified or pre-approved financing must meet any PHA established requirements for financing the purchase of the home (including qualifications of lenders and terms of financing). The pre-qualified or pre-

¹ The monthly SSI benefit for an individual living alone (or paying his or her share of food and housing costs) currently equals \$545. Multiplied by twelve, this equals a \$6540 minimum income threshold for a disabled family under this final rule.

approved financing amount must be sufficient to purchase housing that meets the housing quality standards in the PHA's jurisdiction.

B. Comments Regarding the Eligibility of Units Not Yet Under Construction

Comment: Support for eligibility of new construction. The commenters writing on this proposal unanimously endorsed the eligibility of units not yet under construction for purchase under the homeownership option. Four of the commenters specifically addressed the environmental concerns raised in the preamble to the proposed rule. These commenters wrote that it is the Federal funding obtained by the developer to construct the units—not the homeownership assistance provided to the family—that typically triggers any environmental requirements under the National Environmental Policy Act of 1969 (NEPA) or environmental authorities. The commenters wrote that individual units are not deeded to the family until the developer is ready to begin construction on the units or, in some instances, after construction of the units is completed. Accordingly, the required environmental reviews will be performed in connection with the provision of HOME, Community Development Block Grant (CDBG), Rural Housing Service, or other Federal construction funding. The commenters suggested that the final rule simply defer to the environmental requirements posed by the applicable programs and funding sources for the underlying development.

HUD Response. After careful review of all the issues regarding the eligibility of units not yet under construction (including environmental issues), HUD at this time is not prepared to authorize the purchase of such units with voucher homeownership assistance. The environmental requirements for the Housing Choice Voucher Program are located in 24 CFR part 58. Although, as several of the commenters noted, part 58 categorically excludes individual actions on one to four family properties from review under NEPA, it also requires compliance with other applicable environmental laws (such as those regarding historic preservation, floodplains and wetlands) (see § 58.35(a)(4)). The broader categorical exclusion for homeownership assistance at § 58.35(b)(5) explicitly applies only to “existing dwelling units and dwelling units under construction.” Even if other Federal agencies provide some funding for the units and perform the required environmental reviews, HUD cannot ensure that the reviews will be

conducted in compliance with HUD's regulations.

Although HUD at this time is not prepared to authorize the use of the homeownership option for the purchase of units not yet under construction, it believes that another way to address the concerns raised by the restriction is to revise the existing requirement regarding the timing of new construction. The current regulation at § 982.628 requires that a unit must be under construction at the time the PHA determines the family is eligible for homeownership assistance to purchase the unit. Requiring that construction commence at such an early stage in the homeownership process diminishes the housing choices available to the family, and is unnecessary to ensure compliance with applicable environmental requirements since the voucher family has not yet entered into a binding commitment to purchase the home with Federal funds. Accordingly, this final rule amends § 982.628 to require that a unit need only be under construction at the time the family enters into the contract of sale. HUD will consider a unit to be “under construction” if the footers have been poured.

C. Comments Regarding Eligibility of Manufactured Homes

Comment: Support for proposed changes. Several commenters expressed support for the proposed changes regarding the eligibility of manufactured homes.

HUD Response. HUD appreciates these favorable comments. As noted below, HUD has further expanded the types of housing eligible for purchase under the homeownership option.

Comment: HUD should further expand eligibility to include other types of housing where the homeowner does not also own the underlying real property. Three commenters wrote that HUD should expand the types of eligible housing to include other similar housing types—such as manufactured homes in resident-owned, or nonprofit owned, manufactured home parks and units in land trust networks. The commenters wrote that such a change would expand the housing options for low-income families and conform to the existing secondary market.

HUD Response. HUD has adopted the change suggested by the commenters. This final rule expands the types of eligible housing to include any housing where the family will not also own fee title to the real property on which the home is located. However, the family must have the right to occupy the site for a period of at least forty years.

Further, the home must have a permanent foundation. These requirements are necessary to satisfy the homeownership goals of section 8(y). The statute contemplates the purchase of real property, which necessitates long-term site control.

For all practical purposes, the requirement for a permanent foundation will usually only come into consideration when the purchase involves a manufactured home. HUD notes that the purchase of a manufactured home without a permanent foundation and a short-term pad lease is not eligible for voucher homeownership assistance. Manufactured home owners with short-term lease arrangements are eligible for rental assistance for the pad under section 8(o)(12), but not homeownership assistance under section 8(y).

Comment: HUD must revise list of homeownership expenses to fully implement manufactured home eligibility. Two commenters wrote that in order to fully implement these changes, HUD must revise the list of homeownership expenses for a homeowner other than a cooperative member at § 982.635(c) to include the cost of pad rental and land lease or land trust payments. A corresponding change for cooperative members at § 982.635(c)(3) is unnecessary because these expenses are already included in the cooperative charges.

HUD Response. HUD has adopted the suggestion made by the commenter. This final rule revises § 982.635(c) to include land lease payments. These payments include the cost of leasing the land for both manufactured homes and other housing types where the family does not also own the real property on which the home is located.

Comment: HUD should extend right of occupancy requirement to forty years. One commenter wrote that this change would conform to the policies of certain lenders regarding the purchase of a manufactured home where the borrower does not also own the property on which the home is located. Specifically, these lenders require that the borrower have a leasehold on the property of at least ten years beyond the term of the first mortgage loan.

HUD Response. HUD agrees and has revised the proposed rule in response to this public comment. The revised requirement is consistent with standard FHA mortgage underwriting practices.

D. Comments Regarding Removal of Recapture Provisions

Comment: Support for removal of recapture provisions. Most commenters submitting comments on this issue

applauded HUD's proposal to remove the recapture provisions. The commenters agreed with HUD that recaptures might discourage participation in the homeownership option and pose an undue administrative burden on PHAs.

HUD Response. HUD appreciates the support expressed by these commenters. This final rule adopts the proposal to remove the recapture provisions contained in the June 13, 2001, proposed rule. In addition, this final rule provides that a PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option. This change will ensure that families who purchased their homes prior to issuance of this final rule also receive the benefit provided by removal of the onerous recapture requirements.

Comment: HUD should allow recaptures of downpayment assistance as a local program option. One commenter wrote that, while the recapture of long-term mortgage assistance may be complex and serve as a disincentive for home maintenance, deferred second mortgages for the principal amount of downpayment assistance are common tools in homebuyer assistance programs and are important to local political support for this type of assistance.

HUD Response. HUD has not adopted the suggestion made by the commenter. As noted, this final rule removes the recapture requirements for the homeownership option. HUD does not believe it would be appropriate to establish separate recapture policies for monthly homeownership assistance payments and downpayment grants. In order to have a consistent policy concerning recaptures of homeownership assistance, recaptures of downpayment grants are not authorized.

VI. Discussion of Other Public Comments

Comment: Restrictions on future receipt of homeownership assistance should only apply to family members listed on the title to the home. Two commenters wrote that the prohibition of future receipt of homeownership assistance is unduly harsh for family members who may not be able to take title to, or own, the previous home (including minor children who are not legally able to contract for the purchase of a home). The commenters wrote that any prohibition against receipt of future homeownership assistance should be

directed only to those family members who are taking title to the property.

HUD Response. HUD agrees with the commenters that the current prohibitions may be too severe, especially for minor children who are not able to contract for purchase of the home. However, HUD does not agree that the restriction on future receipt of homeownership assistance should be limited to those members of the family who hold title to the property. The change suggested by the commenters would permit a family to circumvent the restriction by simply having another adult family member take title to the home. Accordingly, the final rule modifies the prohibitions on future receipt of assistance to those family members who were adults at the time the family received prior homeownership assistance. Specifically, a family that includes an individual who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA. Further, a PHA may not provide homeownership assistance for a family if any member was an adult member of a family at the time when such family received assistance under the homeownership option, and defaulted on the mortgage securing purchase of the home.

Comment: Reasonable accommodation requirements are onerous. Two commenters objected to the language of § 982.625(e)(2), which requires PHAs to offer either form of homeownership assistance as a reasonable accommodation for a person with disabilities. The commenters wrote that this provision would require a PHA that has elected not to offer homeownership assistance to create an entire homeownership program in order to address a single family's request. The commenters wrote that this requirement imposes an undue administrative burden on PHAs and should be removed at the final rule stage.

HUD Response. HUD is cognizant of the financial difficulty of administering a single unit homeownership program on behalf of a disabled family. The preamble to HUD's September 17, 2000 (65 FR 55134), final rule implementing the homeownership option provides useful guidance in this regard. As the preamble noted:

The provision of homeownership assistance as a reasonable accommodation is determined on a case-by-case basis by the PHA. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. It is the sole

responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. For example, depending on the individual circumstances, the PHA may determine that it is a reasonable accommodation to provide homeownership assistance when the PHA has implemented a limited homeownership program and is currently assisting the maximum number of homeowners in the PHA program. On the other hand, the PHA may determine that it is not reasonable to provide homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program. (See 65 FR 55145, first column.)

For purposes of clarity, the final rule amends HUD's homeownership option regulations to codify the preamble guidance quoted above. Codification will make this language easier to find, since PHAs and voucher families are more likely to refer to the regulations than to the preamble of the final rule for policy guidance. Further, HUD believes that codification of this guidance will clarify the regulations for voucher families, and better assist PHAs in determining whether homeownership assistance should be provided as a reasonable accommodation. HUD emphasizes that inclusion of this language in the regulations does not establish new procedures or modify existing policies concerning the reasonable accommodation requirements. Rather, the final rule simply repeats current HUD guidance on these requirements.

Comment: Support for reasonable accommodation requirements. One commenter wrote in support of the reasonable accommodation requirements. The commenter urged HUD to require PHAs to offer the homeownership option as a reasonable accommodation, even if the PHA does not otherwise offer Section 8 homeownership assistance. The commenter wrote that accessible and affordable rental units are often difficult to locate. Accordingly, purchase of an accessible unit may be the only viable option for a person with disabilities.

HUD Response. As noted above, it is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability.

Comment: Final rule should provide that voucher homeownership assistance may be used to purchase PHA-owned properties. Two commenters wrote that HUD should allow the purchase of PHA-owned units under the homeownership

option. The commenters also suggested that HUD establish appropriate procedures for inspection of these units to remove the potential of any conflict of interest.

HUD Response. HUD has not incorporated the changes suggested by the commenters in this final rule. Rather, HUD is promulgating the necessary regulatory procedures regarding the sale of PHA-owned properties under the homeownership option in a separate rule.

Comment: HUD should establish guidance regarding PHA coordination in offering the homeownership option.

Two commenters wrote that HUD should encourage smaller PHAs to collaborate with neighboring PHAs that are offering the homeownership option. The commenters wrote that such efforts to pool resources will provide families with more housing choices (including more geographic flexibility on where they can live), attract more lenders to the program due to increased volume, and create more efficient homeownership programs.

HUD Response. HUD encourages PHAs to develop strategies to facilitate efficient use of administrative and other resources in implementing voucher homeownership assistance. Nothing in the homeownership option regulations prohibits one or more PHAs from collaborating to administer a combined homeownership program or to administer complementary homeownership programs.

Comment: HUD should establish homebuyer education requirement. One commenter wrote that HUD should require potential homebuyers to partake in homeownership education before the provision of voucher homeownership assistance.

HUD Response. The existing homeownership regulations already address the concerns expressed by the commenter. As noted above in this preamble, families participating in the homeownership option are required to attend and satisfactorily complete the pre-assistance homeownership and housing counseling program offered by the PHA. Accordingly, no regulatory change is required.

VII. Findings and Certifications

Regulatory Planning and Review

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

Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection 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 20410-0500.

Unfunded Mandates Reform Act

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That finding remains applicable to this final rule and is available for public inspection between the hours of 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 20410-0500.

Impact on Small Entities

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

(1) *A Substantial Number of Small Entities will not be Affected.* The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the final rule implements an alternative to the basic homeownership option under which a PHA may elect to provide a one-time downpayment assistance grant to eligible families. The final rule also makes several clarifying and streamlining amendments to the regulations governing basic homeownership voucher assistance, which is also administered by PHAs.

Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.*

The final rule does not change the amount of funding available under the Housing Choice Voucher Program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 13132, Federalism

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

Catalog of Domestic Assistance Number

The Catalog of Domestic Assistance Number for the Housing Choice Voucher Program is 14.871.

List of Subjects in 24 CFR Part 982

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

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 982 as follows:

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

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

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

2. In § 982.4(b), add the definition of "Downpayment assistance grant" in alphabetical order, and revise the definition of "Homeownership assistance" to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

* * * * *

Homeownership assistance. Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by a PHA for a family: monthly homeownership assistance payments, or a single downpayment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

* * * * *

3. Section 982.601(d) is revised to read as follows:

§ 982.601 Overview.

* * * * *

(d) *Family choice of housing and housing type.* The family chooses whether to use housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to use other eligible housing in accordance with requirements of the program. The PHA may not restrict the family's freedom to choose among available units in accordance with § 982.353.

* * * * *

4. Section 982.625 is amended by:

a. Redesignating paragraphs (c) and (d) as paragraphs (f) and (g), respectively;

b. Adding new paragraphs (c), (d), (e), (h) and (i); and

c. In the introductory paragraph of newly redesignated paragraph (g), remove the reference to "(d)(1), (d)(2), or (d)(3)" and add "(g)(1), (g)(2), or (g)(3)" in its place. The additions and revisions read as follows:

§ 982.625 Homeownership option: General.

* * * * *

(c) *Forms of homeownership assistance.* (1) A PHA may provide one of two forms of homeownership assistance for a family:

(i) Monthly homeownership assistance payments; or

(ii) A single downpayment assistance grant.

(2) *Prohibition against combining forms of homeownership assistance.* A family may only receive one form of homeownership assistance. Accordingly, a family that includes a person who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA.

(d) *PHA choice to offer homeownership options.* (1) The PHA may choose to offer either or both forms of homeownership assistance under this subpart, or choose not to offer either form of assistance. However, the PHA must offer either form of homeownership assistance if necessary as a reasonable accommodation for a person with disabilities in accordance with § 982.601(b)(3).

(2) It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

(e) *Family choice.* (1) The family chooses whether to participate in the homeownership option if offered by the PHA.

(2) If the PHA offers both forms of homeownership assistance, the family chooses which form of homeownership assistance to receive.

* * * * *

(h) *Recapture of homeownership assistance.* A PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option.

(i) *Applicable requirements.* The following specify what regulatory provisions (under the heading "homeownership option") are applicable to either or both forms of homeownership assistance (except as otherwise specifically provided):

(1) *Common provisions.* The following provisions apply to both forms of homeownership assistance:

(i) Section 982.625 (General);

(ii) Section 982.626 (Initial requirements);

(iii) Section 982.627 (Eligibility requirements for families);

(iv) Section 982.628 (Eligible units);
(v) Section 982.629 (Additional PHA requirements for family search and purchase);

(vi) Section 982.630 (Homeownership counseling);

(vii) Section 982.631 (Home inspections, contract of sale, and PHA disapproval of seller);

(viii) Section 982.632 (Financing purchase of home; affordability of purchase);

(ix) Section 982.636 (Portability);

(x) Section 982.638 (Denial or termination of assistance for family); and

(xi) Section 982.641 (Applicability of other requirements).

(2) *Monthly homeownership assistance payments.* The following provisions only apply to homeownership assistance in the form of monthly homeownership assistance payments:

(i) Section 982.633 (Continued assistance requirements; family obligations);

(ii) Section 982.634 (Maximum term of homeownership assistance);

(iii) Section 982.635 (Amount and distribution of monthly homeownership assistance payment);

(iv) Section 982.637 (Move with continued tenant-based assistance); and

(v) Section 982.639 (Administrative fees).

(3) *Downpayment assistance grant.* The following provision only applies to homeownership assistance in the form of a downpayment assistance grant: Section 982.643 (Downpayment assistance grants).

5. Revise § 982.627(c)(1), (c)(2)(iii), (c)(3), and (e) to read as follows:

§ 982.627 Homeownership option: Eligibility requirements for families.

* * * * *

(c) *Minimum income requirements.*

(1) At commencement of monthly homeownership assistance payments for the family, or at the time of a downpayment assistance grant for the family, the family must demonstrate that the annual income, as determined by the PHA in accordance with § 5.609 of this title, of the adult family members who will own the home at commencement of homeownership assistance is not less than:

(i) In the case of a disabled family (as defined in § 5.403(b) of this title), the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve; or

(ii) In the case of other families, the Federal minimum wage multiplied by 2,000 hours.

(2) * * *

(iii) In the case of an elderly or disabled family, the PHA shall include welfare assistance for the adult family members who will own the home in determining if the family meets the minimum income requirement.

(3) A PHA may establish a minimum income standard that is higher than those described in paragraph (c)(1) of this section for either or both types of families. However, a family that meets the applicable HUD minimum income requirement described in paragraph (c)(1) of this section, but not the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if:

(i) The family demonstrates that it has been pre-qualified or pre-approved for financing;

(ii) The pre-qualified or pre-approved financing meets any PHA established requirements under § 982.632 for financing the purchase of the home (including qualifications of lenders and terms of financing); and

(iii) The pre-qualified or pre-approved financing amount is sufficient to purchase housing that meets HQS in the PHA's jurisdiction.

* * * * *

(e) *Prohibition against assistance to family that has defaulted.* The PHA shall not commence homeownership assistance for a family that includes an individual who was an adult member of a family at the time when such family received homeownership assistance and defaulted on a mortgage securing debt incurred to purchase the home.

6. Amend § 982.628 as follows:

- a. Revise paragraphs (a)(2) and (a)(3);
- b. Redesignate paragraph (b) as paragraph (c); and
- c. Add new paragraph (b). The revisions and additions read as follows:

§ 982.628 Homeownership option: Eligible units.

(a) * * *

(2) The unit is either under construction or already existing at the time the family enters into the contract of sale.

(3) The unit is either a one-unit property (including a manufactured home) or a single dwelling unit in a cooperative or condominium.

* * * * *

(b) *Purchase of home where family will not own fee title to the real property.* Homeownership assistance may be provided for the purchase of a home where the family will not own fee title to the real property on which the home is located, but only if:

(1) The home is located on a permanent foundation; and

(2) The family has the right to occupy the home site for at least forty years.

* * * * *

7. Amend § 982.631 as follows:

- a. Revise the section heading;
- b. Revise paragraph (a);
- c. Revise the second sentence of paragraph (b)(4);
- d. Revise the first sentence of paragraph (c)(1); and
- e. Add paragraph (d). The revisions and addition read as follows:

§ 982.631 Homeownership option: Home inspections, contract of sale, and PHA disapproval of seller.

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

(b) * * *

(4) * * * The PHA may not commence monthly homeownership assistance payments, or provide a downpayment assistance grant for the family, until the PHA has reviewed the inspection report of the independent inspector.

* * * * *

(c) *Contract of sale.* (1) Before commencement of monthly homeownership assistance payments or receipt of a downpayment assistance grant, 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. * * *

* * * * *

(d) *PHA disapproval of seller.* In its administrative discretion, the PHA may deny approval of a seller for any reason provided for disapproval of an owner in § 982.306(c).

8. Amend § 982.635 as follows:

- a. In paragraph (c)(2)(vi), remove the word "and";
- b. In paragraph (c)(2)(vii), replace the period at the end of the paragraph with "; and";
- c. Add paragraph (c)(2)(viii); and
- d. In paragraph (e), revise the first sentence. The revisions and additions read as follows:

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

* * * * *

(c) * * *

(2) * * *

(viii) Land lease payments (where a family does not own fee title to the real property on which the home is located; see § 982.628(b)).

* * * * *

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

§ 982.640 [Removed]

9. Remove § 982.640.

10. Revise § 982.641(b)(4) to read as follows:

§ 982.641 Homeownership option: Applicability of other requirements.

* * * * *

(b) * * *

(4) Section 982.306 (PHA disapproval of owner) (except that a PHA may disapprove a seller for any reason described in paragraph (c), see § 982.631(d)).

* * * * *

11. Add § 982.643 to read as follows:

§ 982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide a single downpayment assistance grant for a participant that has received tenant-based or project-based rental assistance in the Housing Choice Voucher Program.

(2) The downpayment assistance grant must be applied toward the downpayment required in connection with the purchase of the home and/or reasonable and customary closing costs in connection with the purchase of the home.

(3) If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see § 982.632(b) of this part regarding the applicability of FHA requirements to voucher homeownership assistance and § 203.27 of this title regarding allowable fees, charges and discounts for FHA-insured mortgages).

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the difference between the payment standard and the total tenant payment.

(c) *Payment of downpayment grant.* The downpayment assistance grant shall be paid at the closing of the family's purchase of the home.

(d) *Administrative fee.* For each downpayment assistance grant made by the PHA, HUD will pay the PHA a one-

time administrative fee in accordance with § 982.152(a)(1)(iii).

(e) *Return to tenant-based assistance.*

A family that has received a downpayment assistance grant may apply for and receive tenant-based rental assistance, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental

assistance for occupancy of the new unit so long as any member of the family owns any title or other interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

(f) *Implementation of downpayment assistance grants.* A PHA may not offer

downpayment assistance under this paragraph until HUD publishes a notice in the **Federal Register**.

Dated: October 8, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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