

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

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

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

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

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

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

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

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

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

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

(d) *Mortgage default.* The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that

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

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

(2) The family fails to demonstrate that:

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

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

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§ 982.639 Homeownership option: Administrative fees.

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

§ 982.640 Homeownership option: Recapture of homeownership assistance.

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

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

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

§ 982.641

24 CFR Ch. IX (4-1-02 Edition)

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

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

(i) The costs of any capital expenditures;

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

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

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

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

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

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

(i) The costs of any capital expenditures;

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

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

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

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

ownership assistance subject to recapture will be zero.

[65 FR 55163, Sept. 12, 2000, as amended at 66 FR 33613, June 22, 2001]

§ 982.641 Homeownership option: Applicability of other requirements.

(a) *General.* The following types of provisions (located in other subparts of this part) 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 of the assisted tenancy;

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

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

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

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

(2) Section 982.303 (Term of voucher);

(3) Section 982.305 (PHA approval of assisted tenancy);

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

(5) Section 982.307 (Tenant screening);

(6) Section 982.308 (Lease and tenancy);

(7) Section 982.309 (Term of assisted tenancy);

(8) Section 982.310 (Owner termination of tenancy);

(9) Section 982.311 (When assistance is paid) (except that § 982.311(c)(3) is applicable to assistance under the homeownership option);

(10) Section 982.313 (Security deposit: Amounts owed by tenant); and

(11) Section 982.314 (Move with continued tenant-based assistance).

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

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

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