

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 982

[Docket No. FR-4661-I-01]

RIN 2577-AC24

**Section 8 Homeownership Program;
Pilot Program for Homeownership
Assistance for Disabled Families**

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

ACTION: Interim rule.

SUMMARY: This interim rule establishes regulations to implement the three-year pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000. A public housing agency (PHA) may elect to provide homeownership assistance to a disabled family under the pilot program, rather than under the Housing Choice Voucher Program homeownership option. Under the pilot program, a PHA provides homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. The interim rule incorporates the requirements for the pilot program in HUD's regulations for the homeownership option. In addition to the amendments implementing section 302, HUD has taken the opportunity afforded by this interim rule to make several clarifying and technical amendments to its September 12, 2000 final rule establishing the homeownership option.

DATES: *Effective Date:* July 23, 2001.
Comments Due Date: August 21, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

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

On September 12, 2000 (65 FR 55134), HUD published its final rule implementing the "homeownership option" under section 8(y) of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), as amended by section 555 of the Quality Housing and Work Responsibility Act of 1998 (title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105-276, 112 Stat. 2461, 2518, approved October 21, 1998). Under the section 8(y) homeownership option, a public housing agency (PHA) may choose to provide tenant-based assistance to an eligible family that purchases a dwelling unit that will be occupied by the family. The September 12, 2000 final rule implemented the section 8(y) homeownership option by adding a new "special housing type" under subpart M of HUD's regulations for the Housing Choice Voucher Program at 24 CFR part 982. Subpart M describes program requirements for alternatives to the basic Housing Choice Voucher Program.

Under the basic homeownership option, special provisions already exist 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 as described in § 982.634). Further, the PHA is required to count welfare assistance provided to the disabled family for purposes of determining whether the family satisfies the minimum income eligibility requirements (generally, such assistance is not counted for other families under § 982.627(c)). 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 (see § 982.627(b)(3)).

Section 302 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106-569, 114 Stat. 2944, approved December 27, 2000) authorizes a pilot program to assist disabled families. Under the pilot program, a PHA may provide tenant-based homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. The pilot program is authorized to operate for a three-year period commencing on the effective date of HUD's implementing regulations.

The pilot program provides disabled families with certain benefits and disadvantages in comparison to the basic homeownership option. For example, families whose annual income exceeds 80 percent of the median income for the area are usually ineligible for admission to the Housing Choice Voucher Program. PHAs may admit disabled families whose annual income is greater than 80 percent of the area median into the pilot program. On the other hand, whenever the annual income of a disabled family participating in the pilot program exceeds 80 percent of the area median income, the amount of assistance the family would normally receive under the subsidy formula for the basic homeownership option is reduced.

II. This Interim Rule

A. Implementation of Pilot Program to Assist Disabled Families

1. *General.* This interim rule establishes regulations to implement the section 302 pilot program. Because assistance under the pilot program is an alternative to tenant-based homeownership assistance, HUD has incorporated the requirements for the pilot program in its regulations for the homeownership option (codified at §§ 982.625-982.641). Specifically, the interim rule establishes a new § 982.642, which describes those requirements that are unique to the pilot program. Except as provided in new § 982.642, all of the regulatory requirements applicable to the homeownership option are also applicable to the pilot program.

A PHA that administers tenant-based assistance has the choice whether to offer homeownership assistance under the pilot program (whether or not the PHA has also decided to offer the basic homeownership option). However, a PHA that elects to provide homeownership assistance under the pilot program must have the required capacity to operate a successful homeownership program (as required under § 982.625(d) of the existing homeownership option regulations).

2. *Eligibility requirements.* The PHA may not provide homeownership assistance under the pilot program unless the PHA determines that the family satisfies all of the following initial requirements at commencement of homeownership assistance for the family:

- The family is a disabled family (as that term is defined in § 5.403 of HUD's regulations);
- The family's annual income at the time of admission does not exceed 99

percent of the median income for the area;

- The family is not a current homeowner;
- The family will close on the purchase of the home during the three year period commencing on the effective date of this interim rule; and
- The family meets the initial requirements for assistance under the homeownership option described in § 982.626. However, section 302 exempts families seeking to participate in the pilot program from two of the eligibility criteria for basic tenant-based homeownership assistance—the requirement that the family be a “first-time homeowner” (as that term is defined in § 982.4) and the income eligibility requirements of § 982.201(b)(1).

Accordingly, a member of the disabled family may have owned a present homeownership interest in a residence during the three-years before commencement of homeownership assistance under the pilot program (as in the basic homeownership option, current homeowners are not eligible to participate in the pilot program). Secondly, the family need not be low-income to participate in the pilot program (however, as noted, the annual income of the family at admission may not exceed 99 percent of the median income for the area). Further, any new admissions to the Housing Choice Voucher Program through this pilot program must be selected from the PHA waiting list and are counted towards the PHA income targeting requirements of § 982.201(b)(2).

3. *Homeownership assistance payments.* While the disabled family is residing in the home, the PHA shall calculate a monthly homeownership assistance payment on behalf of the family by using the lower of (1) the payment standard minus the total tenant payment or (2) the monthly homeownership expenses minus the total tenant payment (see § 982.635). (Total tenant payment is higher of the minimum rent, 10 percent of monthly income, 30 percent of monthly adjusted income, or the welfare rent.) The PHA must use the utility allowance schedule and payment standard schedules applicable to the Housing Choice Voucher Program.

Families will receive a monthly homeownership payment equal to a specified percentage of the amount calculated under § 982.635. The percentage will depend on the annual income of the family at the commencement of assistance under the pilot program, and at subsequent recertifications. The amount of the

homeownership payments will be as follows:

- A family that is a low income family (as defined at 24 CFR 5.603(b)) as determined by HUD shall receive the full amount of the monthly homeownership assistance payment calculated under § 982.635.
- A family whose annual income is greater than the low income family ceiling but does not exceed 89 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 66 percent of the amount calculated under § 982.635.
- A family whose annual income is greater than the 89 percent ceiling but does not exceed 99 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 33 percent of the amount calculated under § 982.635.
- A family whose annual income is greater than 99 percent of the median income for the area shall not receive homeownership assistance under the pilot program.

The family is responsible for the monthly homeownership expenses not reimbursed by the housing assistance payment. The PHA must make the homeownership assistance payments to the lender on behalf of the disabled family (the provisions of § 982.635(d), which permit the PHA to make the payments directly to the family, do not apply to the pilot program). If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

4. *Mortgage defaults.* As in the basic homeownership option, the PHA must terminate assistance for any member of the family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage securing debt incurred to purchase the home, or any refinancing of such debt (whether or not the mortgage is insured by HUD-Federal Housing Administration (FHA)). However, unlike the basic homeownership option, the PHA may permit the family to move to a new unit with continued homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency. In the case of all other mortgage defaults, although the family is not eligible to purchase another home with tenant-based assistance, the PHA may, in its discretion, provide the family with continued voucher rental assistance. The PHA must deny such rental assistance if the family defaulted

on an FHA-insured mortgage and the family fails to demonstrate that:

- The family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and
- The family has moved, or will move, from the home within the time period established or approved by HUD.

B. Technical and Clarifying Changes to Homeownership Option Regulations

In addition to implementing the pilot program for disabled families, HUD has taken the opportunity afforded by this interim rule to make several clarifying and technical amendments to the existing regulations for the homeownership option. The amendments do not establish or modify substantive requirements or procedures. Rather, these technical changes are designed to correct a typographical error, improve the clarity of existing requirements, and facilitate administration of the homeownership option. The changes are as follows:

1. *Correction of typographical error (§ 982.4(b)).* This interim rule corrects a typographical error contained in the definition of the term “*present homeownership interest*” at § 982.4. The codified text erroneously refers to “*present homeownership option.*” Although the appropriate term is made clear by the surrounding text, HUD has taken this opportunity to make the necessary correction.

2. *PHA requirements for financing purchase of home (§ 982.632(a)).* This interim rule clarifies the regulatory provisions governing PHA establishment of lender qualifications. Under § 982.632(a), a PHA may establish requirements for financing the purchase of a home to be assisted under the homeownership option. These requirements may include requirements concerning the qualification of lenders or the terms of financing.

The regulatory language of § 982.632(a) might be interpreted to mean that a PHA may require a family to use the services of specific lenders, thereby restricting the family's ability to secure favorable financing terms. However, as the preamble to the September 12, 2000 final rule makes clear, “[a] PHA may not reduce a family's choice by limiting the use of homeownership assistance to particular * * * lenders” (see, 65 FR 55134, middle column). This interim rule amends § 982.632(a) to clarify that a PHA may not require that families acquire financing from one or more specified lenders.

This interim rule also amends § 982.632(a) to highlight PHA efforts to curb predatory lending abuses in the

homeownership option. The regulatory language contains a non-exclusive list of financing terms that a PHA may elect to require for financing the purchase of a home with homeownership assistance. This interim rule expands this list of examples to clarify that a PHA may choose to require financing terms necessary to protect borrowers against high cost loans or predatory loans. (See section VII of the preamble to the September 12, 2000 final rule establishing the homeownership option for additional discussion regarding the prevention of predatory lending practices, 65 FR 55159, middle column.)

3. *Continued voucher rental assistance following a default on an FHA-insured mortgage (§ 982.638(d)).* This interim rule amends the provisions regarding the continuation of voucher rental assistance to a family following a default on an FHA-insured mortgage. Currently, § 982.638(d) provides that the PHA may only permit such continued assistance if the family has: (1) conveyed title to the home, as required by HUD, to HUD or HUD's designee, and (2) moved from the home within the period established or approved by HUD. This regulatory requirement has the potential to delay the provision of continued assistance to families who will shortly be complying with the two prerequisite requirements for such assistance, but have not yet conveyed title and moved from the home. Accordingly, this interim rule authorizes a PHA to provide continued voucher rental assistance to a family that has defaulted on an FHA-insured mortgage if the family has complied or will be complying with the two requirements described above.

4. *Recapture documentation (§ 982.640(b)).* Under § 982.640, a PHA is required to recapture a percentage of the homeownership assistance provided to a family upon the sale or refinancing of the home. The regulatory language of § 982.640(b) requires that, upon purchase of the home, the family execute documentation "as required by HUD" to secure the PHA's recapture rights. However, given the many variations in State and local law regarding liens, HUD does not believe it would be appropriate, or feasible, to develop a single lien document applicable to all recaptures under the homeownership option. Accordingly, HUD is revising § 982.640(b) to provide PHAs with the necessary flexibility to develop lien documentation that is consistent with State and local requirements.

III. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to the public interest. The reasons for HUD's determination are as follows.

To a large extent, section 302 repeats the statutory language of the section 8(y) homeownership option, which HUD has already implemented through notice and comment rulemaking. Where applicable, the interim rule simply cross-references to those existing regulatory requirements (§ 982.642(b)), and does not elaborate on or modify these provisions. Where the interim rule differs from the regulations for the basic homeownership option (for example, in exempting disabled families from the "first-time homeowner" and the income eligibility requirements) it does so as a result of the statutory mandates contained in section 302 and not as an exercise of HUD's rulemaking discretion. Accordingly, HUD's authority to revise these provisions of the interim rule in response to public comment would be limited.

Further, HUD believes that delaying the implementation of the pilot program to permit prior public comment would be contrary to the public interest. As discussed in this preamble, the pilot program is designed to expand the provision of voucher homeownership assistance to disabled families. Immediate implementation of this interim rule will allow disabled families to enjoy the benefits of the pilot program as expeditiously as possible.

In addition to implementing section 302, HUD has taken the opportunity afforded by this interim rule to make several clarifying and technical amendments to the existing regulations for the homeownership option. The amendments do not establish or modify substantive requirements or procedures. Rather, these technical changes are designed to correct a typographical error, improve the clarity of existing requirements, and facilitate administration of the homeownership

option. Accordingly, HUD believes it is unnecessary to solicit public comments before making these technical changes effective.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comment on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

IV. 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 this rule as a result of that review 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.

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 interim 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.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been 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). This FONSI 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 20410.

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 interim 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 interim 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 interim rule implements a pilot program under which a PHA may elect to provide tenant-based assistance to an eligible disabled family residing in a home purchased and owned by one or more members of the family. Under the definition of "small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The interim rule will 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.

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 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 interim rule is exclusively concerned with the establishment of an alternative use of rental voucher assistance. Specifically, the rule authorizes a PHA to provide tenant-based assistance for an eligible disabled family that purchases a dwelling unit that will be occupied by the family. This interim 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), revise the definition of "Present homeownership interest" to read as follows:

§ 982.4 Definitions

* * * * *

(b) * * *

Present homeownership interest. In the homeownership option: "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.

* * * * *

3. Revise § 982.632(a) to read as follows:

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

(a) The PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option. Such PHA requirements may include requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), or concerning terms of financing (for example, a prohibition of balloon payment mortgages, establishment of a minimum homeowner equity requirement from personal resources, or provisions required to protect borrowers against high cost loans or predatory loans). A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the

family's ability to secure favorable financing terms.

* * * * *

4. Revise § 982.638(d)(2) to read as follows:

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

* * * * *

(d) * * *

(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.

5. Revise § 982.640(b) to read as follows:

§ 982.640 Homeownership option: Recapture of homeownership assistance.

* * * * *

(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.

* * * * *

6. Add § 982.642 to read as follows:

§ 982.642 Homeownership option: Pilot program for homeownership assistance for disabled families.

(a) *General.* This section implements the pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000. Under the pilot program, a PHA may provide homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. A PHA that administers tenant-based assistance has the choice whether to offer homeownership assistance under the pilot program (whether or not the PHA has also decided to offer the homeownership option).

(b) *Applicability of homeownership option requirements.* Except as provided in this section, all of the regulations applicable to the homeownership option (as described in §§ 982.625 through 982.641) are also applicable to the pilot program.

(c) *Initial eligibility requirements.* Before commencing homeownership assistance under the pilot program for a family, the PHA must determine that all

of the following initial requirements have been satisfied:

(1) The family is a disabled family (as defined in § 5.403 of this title);

(2) The family annual income does not exceed 99 percent of the median income for the area;

(3) The family is not a current homeowner;

(4) The family must close on the purchase of the home during the period starting on July 23, 2001 and ending on July 23, 2004; and

(5) The family meets the initial requirements described in § 982.626; however, the following initial requirements do not apply to a family seeking to participate in the pilot program:

(i) The income eligibility requirements of § 982.201(b)(1);

(ii) The first-time homeowner requirements of § 982.627(b); and

(iii) The mortgage default requirements of § 982.627(e), if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency.

(d) *Amount and distribution of homeownership assistance payments.*

(1) While the family is residing in the home, the PHA shall calculate a

monthly homeownership assistance payment on behalf of the family in accordance with § 982.635 and this section.

(2) A family that is a low income family (as defined at 24 CFR 5.603(b)) as determined by HUD shall receive the full amount of the monthly homeownership assistance payment calculated under § 982.635.

(3) A family whose annual income is greater than the low income family ceiling but does not exceed 89 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 66 percent of the amount calculated under § 982.635.

(4) A family whose annual income is greater than the 89 percent ceiling but does not exceed 99 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 33 percent of the amount calculated under § 982.635.

(5) A family whose annual income is greater than 99 percent of the median income for the area shall not receive homeownership assistance under the pilot program.

(e) *Assistance payments to lender.* The PHA must make homeownership

assistance payments to a lender on behalf of the disabled family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family. The provisions of § 982.635(d), which permit the PHA to make monthly homeownership assistance payments directly to the family, do not apply to the pilot program.

(f) *Mortgage defaults.* The requirements of § 982.638(d) regarding mortgage defaults are applicable to the pilot program. However, notwithstanding § 982.638(d), the PHA may, in its discretion, permit a family that has defaulted on its mortgage to move to a new unit with continued voucher homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency. The requirements of §§ 982.627(a)(5) and 982.627(e) do not apply to such a family.

Dated: March 19, 2001.

Mel Martinez,

Secretary.

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