

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
24 CFR Part 982

[Docket No. FR-4670-P-01]

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: Proposed rule.

SUMMARY: This proposed rule would implement section 301 of the American Homeownership and Economic Opportunity Act of 2000. Section 301 amends the statute authorizing 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 2002. In addition to implementation of section 301, this proposed rule also would clarify and streamline several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option.

DATES: *Comments Due Date:* August 13, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. 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 monthly 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. The regulations for the homeownership option are located in §§ 982.625-982.641 of subpart M.

Section 301 of the American Homeownership and Economic Assistance Act of 2000 (Public Law 106-569, 114 Stat. 2944, 2952, approved December 27, 2000) 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 2002.

This proposed rule would amend HUD's regulations for the homeownership option to implement the downpayment assistance authority provided by section 301. In addition to the implementation of section 301, HUD proposes, through this proposed rule, to clarify and streamline several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option.

II. Implementation of Downpayment Assistance Grants
A. General

This proposed rule would implement section 301 by establishing a new § 982.643, which describes the requirements applicable to downpayment assistance grants. Conforming changes would also be made to § 982.4 (which establishes the definitions applicable to the Housing Choice Voucher Program) and § 982.625 (which contains general requirements applicable to the homeownership option).

B. Two Types of Homeownership Assistance

The proposed rule provides that a PHA may provide one of two types of homeownership assistance for a family:

1. Monthly homeownership assistance payments; or
2. A single downpayment assistance grant.

If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. The PHA may choose to offer either or both forms of homeownership assistance under its program, 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). Either form of homeownership assistance may be paid either to a family, or to a mortgage lender on behalf of the family.

C. Eligibility for Downpayment Assistance

To receive a downpayment assistance grant, the proposed rule provides that a family must meet all of the eligibility requirements for participation in the homeownership option. In addition, the proposed rule provides that a family must already have been receiving tenant-based voucher rental assistance for a period of at least one-year to receive a downpayment grant. The House Committee Report on the American Homeownership and Economic Opportunity Act provides that the homeownership-related amendments to the Housing Choice Voucher Program are intended "to assist those *currently receiving rental assistance* to move toward homeownership" (see H.R. Rep. No. 553, 106th Cong., 2d. Sess. pt. 1, at 60 (2000)) (emphasis added). Restricting eligibility to families already receiving voucher assistance will help to ensure that downpayment grants are used to

further the Conferees' objective of helping relatively higher income families with vouchers move "up and out" and become homeowners, freeing up vouchers for other needy renter families. Restricting eligibility to current program participants will also help to minimize duplication with other downpayment programs that are designed to help "new" families not currently receiving rental assistance and help to ensure that the program does not unduly reduce the availability of rental assistance.

HUD specifically invites public comment on whether eligibility for downpayment assistance grants should be limited in another way or expanded and, if so, how. All public comments will be considered in the development of the final rule.

D. Applicability of Other Homeownership Option Requirements

Proposed § 982.625(e)(4) and (e)(6) would specify those regulatory requirements applicable to the basic homeownership option that would apply to downpayment assistance grants. A downpayment grant is a one-time assistance payment. Accordingly, those regulatory provisions that establish ongoing homeownership assistance requirements or procedures would not apply to downpayment assistance grants (in general, §§ 982.633 through 982.641). With the exception of those requirements specifically noted in proposed § 982.625(e)(4) and (e)(6), all requirements applicable to the Housing Choice Voucher program apply to downpayment assistance grants.

E. Maximum Downpayment Grant

Section 301 provides that the maximum 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, based on the income of the family at the time the grant is to be made." Under § 982.635(a), the monthly homeownership assistance payment paid by the PHA on behalf of the family is equal to the lower of (1) the payment standard minus the total tenant payment, or (2) the family's monthly homeownership expenses minus the total tenant payment. The proposed rule provides that the maximum amount of the downpayment grant will be calculated using only the first prong of the test described in § 982.635(a). Specifically, proposed § 982.643(b) provides that a downpayment assistance grant may not exceed twelve times the payment standard minus the total tenant payment (as calculated in accordance

with § 5.628). Homeownership expenses will not be considered in making this determination.

The statutory language of section 301 does not require that homeownership expenses be considered in determining the maximum grant amount. As noted earlier in this preamble, section 301 provides that the maximum downpayment grant must be calculated based on the family's income "at the time the grant is to be made." However, many homeownership expenses (such as principal and interest on initial mortgage debt, the amount of real estate taxes, and the costs of major repairs and replacements) cannot be estimated until after the family has contracted to purchase the home. Since the family is approved for downpayment assistance before it enters into the contract of sale, actual homeownership expenses is unknown and, therefore, cannot be calculated "at the time the grant is to be made."

Requiring the inclusion of homeownership expenses in the calculation of the maximum grant amount might also adversely affect the family's ability to obtain suitable financing, and unduly complicate program administration. The actual amount of homeownership expenses is not known at the time the family applies for financing. Lenders will be reluctant to provide a mortgage loan without knowing the actual amount that the family will have available for the downpayment. Further, HUD expects that, in the majority of cases, homeownership expenses will exceed the payment standard. Accordingly, it is likely that the maximum grant amount for a family will ultimately be based on the payment standard, regardless of whether homeownership expenses are also factored into the calculation.

In the case of a family that purchases a home outside of the initial PHA's jurisdiction, the maximum downpayment grant shall be calculated using the receiving PHA payment standard and policies.

F. Payment and Use of Downpayment Grant

The proposed rule provides that the downpayment assistance grant must be paid at the closing of the family's purchase of the home. The downpayment assistance grant must be applied toward the purchase price of the home. No amount of the downpayment grant may be used for payment of other fees and charges related to the acquisition of the home (such as closing costs).

G. Administrative Fee

For each downpayment assistance grant made by the PHA, HUD would pay the PHA a one-time administrative fee in accordance with § 982.152. Specifically, the administrative fee for downpayment assistance would be treated as an "extraordinary cost" under § 982.152(a)(1)(iii)(C). The administrative fee would be established through HUD field notice, in accordance with the existing procedures for the establishment of such fees. HUD proposes that the administrative fee for downpayment assistance initially be set at \$250.

H. Renewal of Vouchers

When issuing a voucher used for a downpayment assistance grant to a family, the PHA should consider the amount of available reserves. In calculating the per-unit costs for purposes of voucher renewal funding, downpayment assistance shall not be counted.

III. Streamlining and Clarifying Amendments to Homeownership Option

A. Minimum Income Requirement

Section 8(y) of the United States Housing Act of 1937, provides that a family may not receive homeownership assistance unless the family demonstrates that gross monthly income is at least two times the voucher "payment standard" or an "other amount" established by the Secretary (section 8(y)(1)(B), 42 U.S.C. 1437(y)(1)(B)). HUD has implemented the statutory minimum income requirements at § 982.627(c)(1). Specifically, the regulation currently provides for a uniform national minimum income requirement that is equal to 2,000 hours of annual full-time work at the Federal minimum wage.

Some PHAs have expressed a concern that the current minimum income is too low for their area and that few, if any, families with incomes that low would qualify for a mortgage. These PHAs argue that this unrealistically raises the expectations of many families and results in an unnecessary administrative burden for PHAs who must process a large number of applications that have no realistic chance of leading to homeownership. On the other hand, HUD wants to make sure that PHA-specific income limits do not prevent use of the homeownership option by families who can qualify for a mortgage from a reputable lending institution.

To balance these respective concerns, this proposed rule would provide PHAs with the flexibility to establish a

minimum income requirement that is higher than the standard described in § 982.627(c)(1), based on factors such as housing costs and the practices of participating lenders. However, a family that does not meet the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if the family: (1) Meets the HUD-established standard; and (2) 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). Further, the pre-qualified or pre-approved financing amount must be sufficient to purchase decent, safe, and sanitary housing of a modest nature in the PHA's jurisdiction.

B. Eligibility of Units Not Yet Under Construction

The homeownership option regulations at § 982.628(a)(2) provide that a home is eligible for purchase under the homeownership option if, at the time the PHA determines that the family is eligible to purchase the home with homeownership assistance, the home is either existing or under construction. Under the existing regulations, homeownership assistance may not be provided for the purchase of a unit that is not yet under construction. However, HUD has become aware of concerns that this restriction may limit the participation in the homeownership option of families that also participate in certain other Federal homeownership programs. (For instance, the Rural Housing Service Mutual Self-Help Housing Loan program requires the family to assist in the construction of the unit. Typically, under these "sweat equity" homeownership programs, the family must commit to purchase the unit before construction of the home begins.) To address these concerns, and increase participation in the homeownership option, HUD is considering the feasibility of expanding the list of eligible units at the final rule stage to include certain new homes not yet under construction. However, there are several issues that will need to be considered before implementation of such a change—including whether HUD may provide homeownership assistance for the purchase of these units in a manner that is consistent with the statutory environmental review requirements of the National Environmental Policy Act (42 U.S.C. 4321) and related Federal authorities, and does not impose an undue administrative burden. HUD anticipates

that these issues will be resolved by the final rule stage and that the final rule will reflect whether expansion of eligibility is feasible or not.

C. Eligibility of Manufactured Homes

As noted, § 982.628 describes the units eligible for purchase under the homeownership option. Although manufactured housing is not specifically mentioned in § 982.628, the preamble to HUD's September 12, 2000 final rule made clear that a manufactured home and the real property upon which the manufactured home sits are eligible for purchase under the homeownership option (see 65 FR 55134 at 55147, first column). For purposes of clarity, this proposed rule would amend § 982.628 to explicitly reference the eligibility of manufactured homes. The proposed rule would also authorize the provision of homeownership assistance for the purchase of a manufactured home where the family will not own fee title to the real property on which the home is located in certain circumstances. However, the manufactured home must have a permanent foundation. Further, the family must have the right to occupy the manufactured home site for a period of at least thirty years.

D. Removal of Recapture Provisions

The homeownership option regulations at § 982.640 provide for the recapture of a percentage of the homeownership assistance provided to the family upon the sale of refinancing of the home. The recapture provisions were included in the regulation to protect program integrity by preventing windfalls to individual families and program abuses. PHAs, lenders, and other potential program participants, however, have expressed concerns that the recapture provisions are not an important safeguard given the structure and likely use of this subsidy program, will unduly complicate administration of the homeownership option, and will discourage participation in the homeownership option by PHAs, lenders and families. Accordingly, HUD has determined that removal of the recapture provisions is appropriate.

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made 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). The Finding of No Significant Impact 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.

Impact on Small Entities

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

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the proposed rule would implement 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 proposed rule would also make 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 proposed rule would 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 proposed 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 proposes to amend 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 homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for 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. Add § 982.625(e) to read as follows:

§ 982.625 Homeownership option: General.

* * * * *

(e) *Two types of homeownership assistance.* (1) A PHA may provide one of two types of homeownership assistance for a family:

(i) Monthly homeownership assistance payments; or
(ii) A single downpayment assistance grant.

(2) The PHA may choose to offer either or both forms of homeownership assistance under its program, 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)).

(3) Paragraphs (e)(4), (e)(5), and (e)(6) of this section specify what regulatory provisions (under the heading "homeownership option") are applicable to either or both forms of homeownership assistance (except as otherwise specifically provided):

(4) *Common provisions that 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 and contract of sale);

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

(ix) Section 982.636 (Portability) (However, paragraphs (a) and (e) of § 982.636 do not apply to downpayment assistance grants); and

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

(5) *Provisions that apply to homeownership assistance in the form of monthly housing 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);

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

(vi) Section 982.639 (Administrative fees).

(6) *Provision that applies to homeownership assistance in the form of a downpayment assistance grant:* Section 982.643 (Downpayment assistance grants).

4. Revise § 982.627(c)(3) to read as follows:

§ 982.627 Homeownership option: Eligibility requirements for families.

* * * * *

(c) * * *

(3) A PHA may establish a minimum income requirement that is higher than the Federal minimum wage multiplied by 2,000 hours, based on factors such as housing costs and the practices of participating lenders. However, a family that does not meet the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if:

(i) The family meets the minimum income requirement as described in paragraphs (c)(1) and (c)(2) of this section;

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

(iii) 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

(iv) The pre-qualified or pre-approved financing amount is sufficient to purchase decent, safe, and sanitary housing of a modest nature in the PHA's jurisdiction.

* * * * *

5. Amend § 982.628 as follows:

a. Revise paragraph (a)(3);

b. Redesignate paragraph (b) as paragraph (c); and

c. Add new paragraph (b) to read as follows.

§ 982.628 Homeownership option: Eligible units.

(a) * * *

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

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

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

* * * * *

6. In § 982.635(e), revise the first sentence to read as follows:

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

* * * * *

(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. * * *

7. Remove § 982.640.

8. Add § 982.643 to read as follows:

§ 982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide homeownership assistance for the family in the form of a single grant to be applied toward the downpayment required in connection with the purchase of the home.

(2) The family must have already been receiving Section 8 tenant-based rental

assistance for a period of at least one year to receive a downpayment assistance grant under this section.

(3) A member of a family that has received a downpayment assistance grant may not receive monthly homeownership assistance payments from any PHA. A member of a family that has received homeownership assistance payments may not receive a downpayment assistance grant from any PHA.

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the payment standard minus 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).

Dated: May 23, 2001.

Mel Martinez,

Secretary.

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