

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 982

[Docket No. FR-4759-I-01]

RIN 2577-AC39

**Housing Choice Voucher Program
Homeownership Option: Eligibility of
Units Owned or Controlled by a Public
Housing Agency**

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

ACTION: Interim rule.

SUMMARY: This interim rule provides that units owned or substantially controlled by a public housing agency (PHA) are eligible for purchase under the Housing Choice Voucher Program homeownership option. The inclusion of PHA-owned or controlled properties among properties eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option. The interim rule also establishes procedures to remove potential conflicts of interest where the PHA is the seller. Specifically, the interim rule provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. These provisions are modeled on the requirements for PHA-owned units in the voucher rental program.

DATES: *Effective Date:* November 27, 2002.

Comments Due Date: December 27, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to 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. 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 inspection and copying between 7:30 a.m. and 5:30 p.m. 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

Under the "homeownership option" of the Housing Choice Voucher Program, 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 regulatory requirements governing the homeownership option are located in subpart M of HUD's regulations for the Housing Choice Voucher Program at 24 CFR part 982. Subpart M describes program requirements for special housing types, where assistance is provided with voucher program funds under the consolidated annual contributions contract.

This interim rule provides that properties owned or substantially controlled by a PHA are eligible for purchase under the homeownership option. The current homeownership option regulations are unclear regarding the eligibility of PHA-owned units. This interim rule amends § 982.628 of the homeownership option regulations, which concerns the eligibility of units, to specify that a PHA may provide homeownership assistance for the purchase of a PHA-owned unit. The inclusion of PHA-owned units in the universe of eligible units will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the homeownership option.

New § 982.628(c) provides that PHA-owned units are eligible for purchase through the homeownership option, but provides that an independent entity must perform certain administrative duties for which the PHA would normally be responsible. The independent entity must review the contract of sale, conduct the initial housing quality standards (HQS) inspection, and review the independent inspection report. In addition, the independent entity must determine the reasonableness of the sales price and any PHA provided financing.

The reviews performed by the independent entity shall be conducted in accordance with the homeownership option regulations. The independent entity must be selected by the PHA and approved by HUD in accordance with existing procedures under the tenant-based assistance program at § 982.352(b)(iv)(B) and (C). The PHA

may not steer, direct, or require families to purchase PHA-owned properties.

Except for the purchase of PHA-owned units, the homeownership option regulations do not require the PHA to consider the reasonability of the sales price. In addition, although a PHA may establish requirements governing terms and types of financing, it is not required to do so (see § 982.632). Therefore, the requirement that the independent entity review the reasonableness of the sales price and any PHA provided financing for PHA-owned units goes beyond what is otherwise required, but HUD believes a third party review of these two areas is helpful to protect the purchasing family where the seller is also the administering PHA.

II. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advanced notice and public participation. The good cause requirement is satisfied when prior public procedure is "impractical, unnecessary, or contrary to the public interest" (see 24 CFR 10.1). For the following reasons, HUD has determined that it would be contrary to the public interest to delay the effectiveness of this rule in order to solicit prior public comments.

The interim rule eliminates ambiguity in HUD's homeownership option regulations by clarifying that PHA-owned units are eligible for purchase with voucher homeownership assistance. Clarifying that PHA-owned units are eligible for purchase under the homeownership option will expand the availability of housing and affordable homeownership opportunities for voucher families participating in the program. Delaying the effectiveness of this rule to solicit prior public comment would perpetuate the current ambiguity of the regulations, and might prevent families from purchasing PHA-owned units.

Although the interim rule also establishes new requirements for such sales, these procedures are necessary to eliminate potential program abuses where the PHA is also the seller. Further, these procedures are closely modeled on the existing requirements for PHA-owned units under the rental voucher program. Accordingly, these requirements are familiar to PHAs and voucher families, and should not raise

any novel issues or impose undue administrative burdens on PHAs.

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 comments on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

III. Findings and Certifications

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. 4332). That Finding remains applicable to this interim 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.

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 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.

Executive Order 13132, Federalism

Executive Order 13132 (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 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.

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 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. 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 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.

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. Add § 982.628(c) to read as follows:

§ 982.628 Homeownership option: Eligible units.

* * * * *

(c) *PHA-owned units.*

Homeownership assistance may be provided for the purchase of a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA), only if all of the following conditions are satisfied:

(1) The PHA must inform the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;

(2) The unit is not ineligible housing;

(3) The PHA must obtain the services of an independent agency, in accordance with § 982.352(b)(1)(iv)(B) and (C), to perform the following PHA functions:

(i) Inspection of the unit for compliance with the HQS, in accordance with § 982.631(a);

(ii) Review of the independent inspection report, in accordance with § 982.631(b)(4);

(iii) Review of the contract of sale, in accordance with § 982.631(c); and

(iv) Determination of the reasonableness of the sales price and any PHA provided financing, in accordance with § 982.632 and other supplementary guidance established by HUD.

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Dated: September 3, 2002.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

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