

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

[Docket No. FR-4991-F-02]

RIN 2577-AC60

Housing Choice Voucher Program Homeownership Option; Eligibility of Units Not Yet Under Construction

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

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations for the homeownership option authorized under the Housing Choice Voucher (HCV) program. Through the homeownership option, a public housing agency (PHA) may provide voucher assistance for an eligible family that purchases a dwelling unit for residence by the family. This final rule authorizes the use of voucher homeownership assistance for the purchase of units not yet under construction at the time the family contracts to purchase the home. This revision will expand the housing choices available to families participating in the homeownership option under the HCV program. This final rule follows publication of a May 29, 2007, proposed rule and takes into consideration the one public comment received on it. After careful consideration of the issues raised by the commenter, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* November 21, 2007.

FOR FURTHER INFORMATION CONTACT: Danielle Bastarache, Director of the Housing Voucher Management and Operations Division, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4210, Washington, DC 20410-8000; telephone number (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 (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background—The May 29, 2007, Proposed Rule**

On May 29, 2007, at 72 FR 29744, HUD published a proposed rule for public comment to revise its regulations for the homeownership option authorized under the HCV program. Through the HCV program, HUD pays rental subsidies so that eligible families can afford decent, safe, and sanitary

housing. Under the homeownership option of the HCV program, a PHA may provide voucher assistance for an eligible family to purchase, rather than rent, a dwelling unit for residence by the family. The regulations for the homeownership option are codified in subpart M of the HCV program regulations at 24 CFR part 982. Subpart M describes program requirements for alternatives to the basic HCV program.

In general, a PHA that administers assistance under the HCV program may offer homeownership assistance as an option for qualified families. Before commencing homeownership assistance for a family, the PHA determines whether the family is qualified, the unit is eligible, and the family has satisfactorily completed the required PHA program of pre-assistance homeownership counseling. Prior to this final rule, the homeownership option regulations provided that, to be eligible for purchase with voucher assistance, a unit must be either an existing unit or under construction at the time the family enters into the contract for sale. Upon further consideration, HUD found the housing eligibility requirements to be overly restrictive.

For example, job growth in an area will frequently trigger the construction of new housing developments. The eligibility prohibition had the potential to deter voucher families from moving to such an area in search of employment opportunities. In addition, the requirements hampered efforts to use homeownership voucher assistance in combination with mutual self-help or other sweat-equity programs in those high-cost market areas where affordable homeownership opportunities otherwise remain elusive for participating homeownership voucher families. Further, many localities have established affordable housing requirements for developers of new housing subdivisions mandating that a specified percentage of the homes to be constructed be set aside for purchase by low-income families. The eligibility restriction that was formerly in place prohibited voucher families from benefiting from these local affordable housing initiatives prior to the construction of new homes.

Since few existing homes are accessible to persons with impaired mobility, the prohibition also had the potential to make it more difficult for persons with disabilities to purchase a home with voucher assistance. Modification of the home following purchase is not always easily accomplished and may require the purchaser to incur significant additional

costs. Allowing the purchase of units not yet under construction, as provided by the May 29, 2007, proposed rule, would allow individuals with disabilities to make design changes for accessibility purposes while the home is being built, thus minimizing homeownership costs.

II. Discussion of Public Comment

The public comment period on the May 29, 2007, proposed rule closed on July 30, 2007. HUD received one public comment from a housing authority.

The commenter stated that it strongly supports the proposed rule but considered § 982.628(e)(1)(i) of the proposed rule too rigid because it did not specify a time limit for HUD to approve the environmental certification, as completed by the responsible entity, and to request the release of funds. The commenter suggested that its experience has shown that once the environmental certification is completed by the responsible entity, approval and request for the release of funds should be a simple process that should be able to be completed within a 30-day time frame. The commenter stated that any delay beyond the 30-day period would delay the start of construction and increase the cost to the builder and eventually to the homebuyer and the HCV homeownership program.

HUD declines to adopt the commenter's suggestion. HUD agrees with the commenter that once the environmental certification is completed, HUD approval and release of funds is a simple process, and to date, PHAs have not expressed concerns that a finite time period for completion of the approval and release of funds process is necessary. HUD is concerned that adopting a one-size-fits-all approach would hamper any flexibility that may be necessary under certain circumstances. However, in the event that delays result in the approval and release of funds process, HUD will revisit this issue.

This final rule therefore adopts the proposed rule without change and permits the use of voucher homeownership assistance for the purchase of units not yet under construction at the time the family contracts to purchase the home.

III. This Final Rule

Consistent with the proposed rule, this final rule provides that the PHA may not commence homeownership assistance for the family until: (1) HUD has approved an environmental certification and request for release of funds under 24 CFR part 58 or has notified the PHA of environmental

approval of the site under 24 CFR part 50 prior to commencement of construction; (2) the unit's construction has been completed; and (3) the unit has passed the Housing Quality Standards and independent inspections required under § 982.631(a). Since the final rule authorizes the provision of federal homeownership assistance to be used for units not yet under construction, the assistance must comply with applicable federal environmental review requirements. Individual actions on up to four dwelling units are generally excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). Such actions, however, must comply with other federal environmental review authorities (such as those regarding the preservation of historic properties, the management of floodplains, and the protection of wetlands). HUD's regulations implementing NEPA and related environmental laws and authorities are codified at 24 CFR parts 50 and 58.

Under 24 CFR part 58, a unit of general local government, a county, or a state (referred to in 24 CFR part 58 as the "responsible entity") is responsible for the required federal environmental reviews, pursuant to a number of HUD program statutes, including Title I of the United States Housing Act of 1937, which authorizes the HCV program. If a PHA objects in writing to the performance of the federal environmental review by the responsible entity, or if the responsible entity declines to perform the review, then HUD may perform the environmental review itself (see 24 CFR 58.11). HUD's performance of the environmental review is governed by 24 CFR part 50.

Consistent with the proposed rule, the final rule also requires additional terms to be included in the contract of sale if the unit is not yet under construction and instructs PHAs on when it is appropriate to begin providing homeownership assistance. Specifically, the contract of sale between the family and the seller must provide that: (1) The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site has received environmental approval prior to commencement of construction, in accordance with 24 CFR 982.628; (2) construction will not commence until the required environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained.

The environmental review may not necessarily result in environmental

approval, and environmental approval may be conditioned on the contracting parties' agreement to modifications to the unit design or to mitigation actions; and (3) commencement of construction in violation of the preceding clause voids the purchase contract and renders homeownership assistance under this part unavailable for purchase of the unit. A PHA may not commence homeownership assistance for the family until either: (1) The responsible entity has completed the environmental review procedures required by 24 CFR part 58 and HUD has approved the environmental certification and request for release of funds; or (2) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA, in writing, of environmental approval of the site.

This final rule permits voucher families to benefit from local affordable housing initiatives and development of affordable housing in areas where job growth is occurring, as well as aids in reducing the cost of making homes accessible to persons with mobility impairments while still complying with applicable federal environmental review requirements.

This final rule, consistent with the proposed rule, makes explicit that the initial environmental review requirements for units not yet under construction are broader than for those units that are constructed or that are under construction. The final rule provides that when a family receiving homeownership assistance chooses to move to another unit, environmental review requirements must be satisfied for that unit in order for the family to continue receiving tenant-based assistance. This includes completing a new environmental review for any unit not yet under construction.

IV. Findings and Certifications

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. 4332(2)(C)). That finding remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule

an appointment to review the finding by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule is exclusively concerned with PHAs that administer tenant-based housing assistance under the HCV program. Specifically, the final rule expands the types of units that are eligible for purchase under the homeownership option to include units not yet under construction at the time the family enters into the contract of sale. 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 fewer than 50,000 persons. The number of entities potentially affected by this rule is, therefore, not substantial. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on 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 rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (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 on the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for the HCV program is 14.871.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income 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. Revise § 982.626(c) to read as follows:

§ 982.626 Homeownership option: Initial requirements.

* * * * *

(c) *Environmental requirements.* The PHA is responsible for complying with the authorities listed in § 58.6 of this title requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barrier resources system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones. In the case of units not yet under construction at the time the family enters into the contract for sale, the additional environmental review requirements referenced in § 982.628(e) of this part also apply, and the PHA shall submit all relevant environmental information to the responsible entity or to HUD to assist in completion of those requirements.

■ 3. Amend § 982.628 as follows:

■ a. Remove paragraph (a)(2);

■ b. Redesignate paragraphs (a)(3), (a)(4), and (a)(5) as paragraphs (a)(2), (a)(3), and (a)(4), respectively; and

■ c. Add paragraph (e) to read as follows:

§ 982.628 Homeownership option: Eligible units.

* * * * *

(e) *Units not yet under construction.* Families may enter into contracts of sale for units not yet under construction at the time the family enters into the contract for sale. However, the PHA shall not commence homeownership assistance for the family for that unit, unless and until:

(1) Either:

(i) The responsible entity completed the environmental review procedures required by 24 CFR part 58, and HUD approved the environmental certification and request for release of funds prior to commencement of construction; or

(ii) HUD performed an environmental review under 24 CFR part 50 and notified the PHA in writing of environmental approval of the site prior to commencement of construction;

(2) Construction of the unit has been completed; and

(3) The unit has passed the required Housing Quality Standards (HQS) inspection (see § 982.631(a)) and independent inspection (see § 982.631(b)).

■ 4. Add § 982.631(c)(3) to read as follows:

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

* * * * *

(c) * * *

(3) In addition to the requirements contained in paragraph (c)(2) of this section, a contract for the sale of units not yet under construction at the time the family is to enter into the contract for sale must also provide that:

(i) The purchaser is not obligated to purchase the unit unless an

environmental review has been performed and the site has received environmental approval prior to commencement of construction in accordance with 24 CFR 982.628.

(ii) The construction will not commence until the environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained. Conduct of the environmental review may not necessarily result in environmental approval, and environmental approval may be conditioned on the contracting parties' agreement to modifications to the unit design or to mitigation actions.

(iii) Commencement of construction in violation of paragraph (c)(3)(ii) of this section voids the purchase contract and renders homeownership assistance under 24 CFR part 982 unavailable for purchase of the unit.

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■ 5. Revise § 982.637(b) introductory text to read as follows:

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

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(b) *Requirements for continuation of homeownership assistance.* The PHA must determine that all initial requirements listed in § 982.626 (including the environmental requirements with respect to a unit not yet under construction) have been satisfied if a family that has received homeownership assistance wants to move to such a unit with continued homeownership assistance. However, the following requirements do not apply:

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Dated: October 15, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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