

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 92, 200, 236, 574, 582, 583, 891, and 982**

[Docket No. FR-4608-P-01]

RIN 2501-AC72

**Determining Adjusted Income in HUD Programs Serving Persons With Disabilities: Requiring Mandatory Deductions for Certain Expenses; and Disallowance for Earned Income**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend HUD's regulations in part 5, subpart F, to include additional HUD programs in the list of programs that must make certain deductions in calculating a family's adjusted income. These deductions primarily address expenses related to a person's disability, for example medical expenses or attendant care expenses. The purpose of this amendment is to expand the benefits of these deductions to persons with disabilities served by HUD programs not currently covered by part 5, subpart F. Second, the proposed rule would add a new regulatory section to part 5 to require for some but not all of these same programs the disallowance of increases in income as a result of earnings by persons with disabilities. HUD believes that making these deductions and disallowance available to persons with disabilities through as many HUD programs as possible will assist persons with disabilities in obtaining and retaining employment, which is an important step toward economic self-sufficiency.

**DATES:** Comments Due Date: October 20, 2000.

**ADDRESSES:** Interested persons are invited to submit comments on this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications must refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

**FOR FURTHER INFORMATION CONTACT:** For the HOME Investment Partnerships Program, contact Mary Kolesar, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Washington, DC, 20410, telephone (202) 708-2470.

For the Housing Choice Voucher Program, contact Patricia Arnaudo, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708-0744.

For the Housing Opportunities for Persons with AIDS Program, contact David Vos, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 708-1934.

For the Rent Supplement Program, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000.

For the Rental Assistance Payment (RAP) Program, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000.

For the Section 202 Supportive Housing Program for the Elderly (including Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), contact Aretha Williams, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2866.

For Section 8 Project-Based, contact Willie Spearmon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000.

For the Section 811 Supportive Housing Program for Persons with Disabilities, contact Gail Williamson, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2866.

For the Shelter Plus Care Program, contact Jean Whaley, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708-2140.

For the Supportive Housing Program (McKinney Act Homeless Assistance), contact Clifford Taffet, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708-1234.

For all of the above telephone numbers, persons with hearing or

speech-impairments may call 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, the telephone numbers are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**I. This Proposed Rule—Background and Proposed Amendments**

HUD's FY 1999 Appropriations Act, which included the Quality Housing and Work Responsibility Act of 1998 (as title V of the FY 1999 HUD Appropriations Act) (the entire FY 1999 Appropriations Act, including title V, is Public Law 105-276, approved October 21, 1998, and frequently referred to as the "Public Housing Reform Act") enacted landmark measures in HUD programs, including many of the reforms sought by Secretary Cuomo, such as transforming public housing, creating additional housing assistance vouchers, merging the Section 8 certificate and voucher programs, and enabling more families to obtain FHA mortgages to become homeowners. Since the Public Housing Reform Act became law, HUD has published many rules and notices implementing the important changes in HUD programs required by the Act. While the majority of these changes are applicable to HUD's public housing and Section 8 programs, HUD has been able to extend, administratively at times, the benefits of some of these landmark measures to HUD programs not specifically identified by the statute. The particular focus of this proposed rule is to extend the benefits of (1) deducting certain expenses as provided by the Public Housing Reform Act (currently applicable only to public housing and Section 8 housing (tenant-based and project-based)); and (2) disregarding certain increases in earned income as provided by the Public Housing Reform Act (currently applicable only to public housing) to persons with disabilities served by certain other HUD programs. These deductions and the disregard of earned income constitute an important step in helping persons with disabilities find employment and retain employment.

HUD is aware that the lack of accessible, affordable housing continues to be a barrier to the ability of persons with disabilities to take advantage of economic opportunities in many communities across the country. The availability of accessible, affordable housing and the location of that housing can be the key to persons with disabilities in obtaining employment. Estimates concerning unemployment indicate that the unemployment rate

among persons with significant disabilities is in the range of 70% to 75%, among the highest of disadvantaged groups in the nation. To minimize the barriers to accessible, affordable housing, HUD is continually examining its programs to determine ways, through administrative initiatives or legislative or regulatory changes, that may assist in breaking down these barriers. HUD has identified two changes that it can make through rulemaking that HUD believes will encourage and facilitate employment of persons with disabilities, and may be implemented administratively in several HUD programs.

The first amendment proposed by this proposed rule involves extending the applicability of certain mandatory deductions in calculating family adjusted income to other HUD programs that serve persons with disabilities. Section 508 of the Public Housing Reform Act amended section 3(b) of the U.S. Housing Act of 1937 (1937 Act) to change the calculation of adjusted income by adding a number of mandatory deductions to determine adjusted income. These mandatory deductions include disability-related expenses, including medical expenses and attendant care expenses, as well as child-care expenses, and other expenses that would benefit persons with disabilities. These deductions, currently applicable to public housing and Section 8 housing (tenant-based and project-based), can be found in 24 CFR 5.611(a) (see the March 29, 2000, final rule at 65 FR 16717, first column; see also the definition of "responsible entity" in 24 CFR 5.100, which only covers public housing and Section 8 housing). Because several HUD non-public housing or non-Section 8 programs define "low-income" or "very low-income" persons or families as they are defined or in a manner similar to the 1937 Act, or provide for family income to be determined in accordance with the requirements of the 1937 Act, or both, HUD can apply the mandatory deductions in § 5.611(a) to several HUD programs. In fact, several of the HUD programs included in this proposed rule were able to apply the deductions listed in § 5.611 before the amendments made by the March 29, 2000 final rule. Therefore, it is appropriate and beneficial that these programs continue to be able to take advantage of these deductions. The March 29, 2000 final rule, however, did not address these programs. The March 29, 2000 final rule was limited to public housing and Section 8 tenant-based and project-based assistance. This proposed rule is

issued to continue the applicability of these deductions to non-public housing and non-Section 8 housing programs. Although these deductions, because of the type of deductible expenses, primarily benefit persons with disabilities, the deductions are eligible to all persons and families served by the programs listed above, not only persons or families with disabilities. Additionally, unless specifically provided in the program regulations amended by this proposed rule, these deductions do not replace other deductions made available to persons with disabilities or to other persons or families as provided in the program regulations.

The HUD programs to which these deductions, as revised by the March 29, 2000 final rule, would be applicable are as follows: HOME Investment Partnerships Program (HOME Program), Housing Opportunities for Persons with AIDS (HOPWA), Rent Supplement Payments Program, Rental Assistance Payments Program, Section 202 Supportive Housing for the Elderly, Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities,<sup>1</sup> Section 811 Supportive Housing for Persons with Disabilities, the Shelter Plus Care Program, and the Supportive Housing Program (McKinney Act Homeless Assistance). As the list of HUD programs reflects, many of the programs are not directed to providing assistance only to persons with disabilities, but persons with disabilities are included in the populations served by these programs.

With respect to the HOME Program, the regulations for this program currently provide (in 24 CFR 92.203) for the calculation of adjusted income to apply the deductions in 24 CFR 5.611. However, the applicability of these deductions can be clarified and HUD makes the clarification in this proposed rule by defining "responsible entity" in part 5 to include HOME Program participating jurisdictions.

With respect to the Rent Supplement Program, the regulations for this program, previously codified in 24 CFR part 215, were removed from title 24 of the Code of Regulations in April 1996 because the Rent Supplement Program is an expiring program. New assistance has not been provided under this program for many years, and HUD is closing out the program. HUD retained a "savings clause," however, to ensure that the existing assistance provided by

this program continues to be governed by the regulations in effect before their removal, and any subsequent amendments that HUD may make to these regulations. The savings clause is found in 24 CFR part 200, subpart W (see 24 CFR 200.1302). The amendments that HUD has made to the Rent Supplement regulations, since the 1996 removal, are found in 24 CFR 200.1303.

The Rental Assistance Payments Program is also an inactive program. The regulations for this program are codified in 24 CFR part 236, subpart D. Section 236.1 of these regulations provide notice that a moratorium against issuance of commitments to insure new mortgages under section 236 of the National Housing Act (NHA) was imposed January 5, 1973. Section 236(n) of the NHA prohibits the insurance of mortgages under section 236 after November 30, 1983, except to permit the refinance of a mortgage insured under section 236, or to finance pursuant to section 236(j)(3), the purchase, by a cooperative or nonprofit corporation or association, of a project assisted under section 236. As a result of the statutory provisions, HUD removed the majority of the regulations in 24 CFR part 236, subpart A, that provided the eligibility requirements for section 236 mortgage insurance. Subpart A of part 236 also includes a savings clause that advises that the regulations formerly in subpart A remain applicable to section 236 mortgages. Subpart A includes a regulatory section on annual income exclusions. HUD recognized that it was appropriate to retain a section on annual income exclusions because these exclusions may be revised by statute from time to time. For the Rental Assistance Payments Program, this proposed rule amends that applicable provisions of subpart A by amending § 236.710, which reference subpart A.

For both the Rent Supplement Program and the Rental Assistance Payments Program, this proposed rule also updates the definitions for certain terms, that appear in HUD regulations, including "disabled person" and "handicapped person," by replacing them with the term "person with disabilities" appears in section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013). For the definition of "handicapped families," certain Federal Housing Administration statutes cross-reference the definition of the term in section 202 of the Housing Act of 1959 which program, for purposes of providing housing for handicapped and/or disabled persons, was replaced by section 811. There is no longer a definition for "handicapped person" or

<sup>1</sup> The original name for this program was "Section 202 Direct Loans for Housing for the Elderly and Handicapped." This changes the name to the more appropriate "Section 202 Loans for Housing for the Elderly and Persons with Disabilities."

“handicapped families” in the Section 202 or Section 811 statutes. Section 811, however, does have a definition of “person with disabilities” which is generally synonymous with the regulatory terms used for FHA programs.

The second amendment proposed by this proposed rule is to expand the “earned income disregard” that is now applicable only to HUD’s public housing program to the calculation of income for persons with disabilities in four HUD programs that statutorily permit this expansion. HUD’s public housing regulations provide in 24 CFR 960.255 for the exclusion from the calculation of annual income those increases in income that result from employment, participation in an economic self-sufficiency or other job training program, or assistance received from a state program for temporary assistance for needy families (TANF). The four HUD programs for which HUD has the authority to implement the earned income disregard for persons with disabilities are: HOME, the Housing Choice Voucher Program (which is the merged Section 8 certificate and voucher programs, the Section 8 tenant-based programs), HOPWA, and Supportive Housing Program (McKinney Act Homeless Assistance). In extending the earned-income disregard to these four HUD programs, HUD recognizes that the Public Housing Reform Act specifically directed the earned-income disregard to be applied to public housing. Application of the earned-income disregard to Section 8 assistance (tenant-based or project-based) was not explicitly addressed in the statute, as it was for public housing and as were other changes that explicitly addressed both public housing and Section 8 housing programs. HUD has determined, however, that the language of the statute provides the flexibility to extend the earned-income disregard to Section 8 tenant-based rental assistance programs. HUD is therefore extending the earned-income disregard to the four programs identified above that provide for Section 8 tenant-based rental assistance, but at this time, however, HUD is limiting the extension of the earned-income disregard, to persons with disabilities, the group served by HUD with the highest unemployment rate. HUD is analyzing the extension of the earned-income disregard to all families served by HUD in these programs, and welcomes comment on this issue.

The specifics of the mandatory deductions to be made are found in § 5.611 of this proposed rule, and for the

earned income disregard in new § 5.617 that is added by this proposed rule. The March 29, 2000 final rule removed the previous version of § 5.617, captioned “Reexamination and verification” which addressed income reexamination and verification. With the removal of this regulatory section, HUD is using § 5.617 to address disregard of earned income for persons with disabilities. In addition to these amendments, HUD amends § 5.601 of subpart F to include reference to the HUD programs to which applicability of the mandatory deductions and earned income disregard is being proposed by this rule. HUD amends the definitions in § 5.603 to include a definition of “responsible entity” to cover the entities that have responsibility for administering the HUD program to be referenced in § 5.601. HUD also makes conforming amendments to the regulations that govern these programs (e.g., the regulations in parts 200, 236, 574, etc.) to provide a cross-reference to the amended and, if applicable, the new regulatory section in part 5, subpart F. By the time of issuance of the final rule, HUD may determine that additional conforming amendments must be made in the covered program regulations, and HUD will make these additional amendments at the final rule stage.

HUD believes that the regulatory changes proposed by this rule represent an important step forward in helping to remove financial barriers that make it difficult for persons with disabilities who are seeking to obtain employment, and to keep employment once obtained. The hope is that the financial savings to a person with disabilities that this proposed rule would provide presents an incentive to that person to continue working, or if not working, to seek employment. Additionally, HUD believes that not only are the changes beneficial to the persons with disabilities that are served by the HUD programs identified above, they are also beneficial to the owners and entities that administer the HUD assisted housing for these persons and families. These proposed amendments provide, to the extent permitted by statute, greater uniformity in determining annual income for HUD programs that serve persons with disabilities, and hopefully through this uniformity minimize the administrative burden that results from the different requirements under different programs for persons and families in similar or identical circumstances.

## II. Findings and Certifications

### *Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of HUD’s regulations, this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, or manufactured housing. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

### *Regulatory Planning and Review*

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned “Regulatory Planning and Review”) and determined that this proposed 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 proposed rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

### *Regulatory Flexibility Act*

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is limited to expanding existing mandatory expense deductions and earned income disregard to the calculation of income for persons with disabilities in other HUD programs by which the program participants will benefit, and the owners of the housing assisted by these programs will benefit from the uniformity in the program administration this proposed rule presents and the simplicity. Notwithstanding HUD’s determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comment regarding any less burdensome alternatives to this proposed rule that

will meet HUD's objectives as described in this proposed rule.

#### *Executive Order 13132, Federalism*

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 Executive Order 13132 (entitled "Federalism").

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

#### **List of Subjects**

##### *24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 92*

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

##### *24 CFR Part 236*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 574*

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

##### *24 CFR Part 582*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

##### *24 CFR Part 583*

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

##### *24 CFR Part 891*

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 982*

Grant programs—Housing and community development, Housing, Rent subsidies.

Accordingly, HUD proposes to amend parts 5, 92, 200, 236, 574, 582, 583, 891 and 982 of title 24 of the Code of Federal Regulations as follows:

#### **PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. The heading for subpart F is revised to read as follows:

#### **Subpart F—Section 8 and Public Housing, and Other HUD Assisted Housing Serving Persons with Disabilities: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance**

3. Section 5.601 is revised to read as follows:

##### **§ 5.601 Purpose and applicability.**

This subpart states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences;

(3) Owner reexamination of family income and composition.

(d) Determining adjusted income, as provided in § 5.611(a) and (b), for families who apply for or receive assistance under the following programs: HOME Investment Partnerships Program (24 CFR part 92); Rent Supplement Payments Program (24 CFR part 200, subpart W); Rental Assistance Payments Program (24 CFR part 236, subpart D); Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); Section 202 Supportive Housing Program for the Elderly (24 CFR 891, subpart B); Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities (24 CFR part 891, subpart E) and the Section 811 Supportive Housing for Persons with Disabilities (24 CFR part 891, subpart C). Unless specified in the regulations for each of the programs listed in paragraph (d) of this section or in another regulatory section of this part 5, subpart F, the regulations in part 5, subpart F, generally are not applicable to these programs.

(e) Determining earned income disregard for persons with disabilities, as provided in § 5.617, for the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (McKinney Act Homeless Assistance) (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

4. In § 5.603, paragraph (a)(1) is revised and a new definition of "responsible entity" is added to paragraph (b) to read as follows:

##### **§ 5.603 Definitions.**

\* \* \* \* \*

(a) *Terms found elsewhere in part 5.*

(1) *Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, *responsible entity* and *Section 8* are defined in § 5.100.

\* \* \* \* \*

(b) \* \* \*

*Responsible entity.* For § 5.611, in addition to the definition of “responsible entity” in § 5.100, and for § 5.617, in addition to only that part of the definition of “responsible entity” in § 5.100 which addresses the Section 8 program covered by § 5.617 (public housing is not covered by § 5.617), “responsible entity” means:

(1) For the HOME Investment Partnerships Program, the participating jurisdiction, as defined in 24 CFR 92.2;

(2) For the Rent Supplement Payments Program, the owner of the multifamily project;

(3) For the Rental Assistance Payments Program, the owner of the Section 236 project;

(4) For the Housing Opportunities for Persons with AIDS (HOPWA) program, the applicable “State” or “unit of general local government” or “nonprofit organization” as these terms are defined in 24 CFR 574.3, that administers the HOPWA Program;

(5) For the Shelter Plus Care Program, the “Recipient” as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the “recipient” as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the “Owner” as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the “Borrower” as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the “owner” as defined in 24 CFR 891.305.

\* \* \* \* \*

5. Revise § 5.611 to read as follows:

**§ 5.611 Adjusted income.**

Adjusted income means annual income (as determined by the responsible entity, defined in § 5.100 and § 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) \$480 for each dependent;

(2) \$400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.* (1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

6. A new § 5.617 is added to read as follows:

**§ 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

(a) The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) *Definitions.* The following definitions apply for purposes of this section.

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A disabled family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section:

(1) Whose annual income increases as a result of employment of a family

member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least \$500.

(c) *Disallowance of increase in annual income.*

(1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member who is

a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) *Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

#### **PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM**

7. The authority citation for part 92 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12701-12839.

8. In § 92.203, a new paragraph (d)(3) is added to read as follows:

##### **§ 92.203 Income determinations.**

\* \* \* \* \*

(d) \* \* \*  
(3) The participating jurisdiction must follow the requirements in § 5.617 when making subsequent income determinations of persons with disabilities who are tenants in HOME-assisted rental housing or who receive tenant-based rental assistance.

#### **PART 200—INTRODUCTION TO FHA PROGRAMS**

9. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1701-1715z-18; 42 U.S.C. 3535(d).

10. Section 200.1303 is revised to read as follows:

##### **§ 200.1303 Annual income exclusions for the Rent Supplement Program.**

(a) The exclusions to annual income described in 24 CFR 5.609(c) apply to those rent supplement contracts governed by the regulations at 24 CFR part 215 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219), in lieu of the annual income exclusions described in 24 CFR 215.21(c) (contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

(b) The mandatory deductions described in 24 CFR 5.611(a) also apply to the rent supplement contracts described in paragraph (a) of this section in lieu of the deductions

provided in the definition of “adjusted income” in 24 CFR 215.1 (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219).

(c) The definition of “persons with disabilities” in paragraph (c) of this section replaces the terms “disabled person” and “handicapped person” used in the regulations in 24 CFR part 215, subpart A (as contained in the April 1, 1995 edition of 24 CFR, parts 200 to 219). *Person with disabilities*, as used in this part, has the same meaning as provided in 24 CFR 891.305.

#### **PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS**

11. The authority citation for part 236 continues to read as follows:

**Authority:** 12 U.S.C. 1701-1715z-1; 42 U.S.C. 3535(d).

##### **Subpart D—Rental Assistance Payments**

12. Section 236.710 is revised to read as follows:

##### **§ 236.710 Qualified tenant.**

(a) The benefits of rental assistance payments are available only to an individual or a family who is renting a dwelling unit in a project that is subject to a contract entered into under the requirements of this subpart or who is occupying such a dwelling unit as a cooperative member. To qualify for the benefits of rental assistance payments, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(b) To receive rental assistance under this subpart, the income of the individual or family must be determined to be too low to permit the individual or family to pay the approved Gross Rent with 30 percent of the individual's or family's Adjusted Monthly Income, as defined in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499). Determination of the Adjusted Monthly Income must include the deductions required for adjusted income in 24 CFR 5.611(a) in lieu of the deductions provided in the definition of “adjusted income” in 24 CFR 236.2 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(c) For requirements concerning the disclosure and certification of Social Security Numbers, see 24 CFR part 5, subpart B. For requirements regarding

the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5, subpart E.

(d) The definition of “persons with disabilities” in paragraph (d) of this section replaces the terms “disabled person” and “handicapped person” used in the regulations in 24 CFR part 236, subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)). *Person with disabilities*, as used in this part, has the same meaning as provided in 24 CFR 891.305;.

#### **PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS**

13. The authority citation for part 574 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 12901-12912.

14. Paragraphs (d)(1) and (d)(3) of § 574.310 are revised to read as follows:

##### **§ 574.310 General standards for eligible housing activities.**

\* \* \* \* \*

(d) *Resident rent payment.* \* \* \*  
(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 5.609). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for eligible persons, the calculation of monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

\* \* \* \* \*

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

\* \* \* \* \*

#### **PART 582—SHELTER PLUS CARE**

15. The authority citation for part 582 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11403-11407b.

16. Section 582.310 is revised to read as follows:

**§ 582.310 Resident rent.**

(a) *Amount of rent.* Each participant must pay rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)), except that in determining the rent of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act, the gross income of this person is the same as if the person were being assisted under title XVI of the Social Security Act.

(b) *Calculating income.* (1) Income of participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) Recipients must examine a participant's income initially, and at least annually thereafter, to determine the amount of rent payable by the participant. Adjustments to a participant's rental payment must be made as necessary.

(3) As a condition of participation in the program, each participant must agree to supply the information or documentation necessary to verify the participant's income. Participants must provide the recipient information at any time regarding changes in income or other circumstances that may result in changes to a participant's rental payment.

**PART 583—SUPPORTIVE HOUSING PROGRAM**

17. The authority citation for part 583 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11389.

18. In § 583.315, paragraph (a) is revised to read as follows:

**§ 583.315 Resident rent.**

(a) *Calculation of resident rent.* Each resident of supportive housing may be required to pay as rent an amount determined by the recipient which may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses and child care expenses). The calculation of the family's monthly adjusted income must include the expense deductions provided in 24 CFR 5.611(a), and for persons with disabilities, the calculation of the family's monthly adjusted income also must include the disallowance of earned income as provided in 24 CFR 5.617, if applicable;

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

\* \* \* \* \*

**PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES**

19. The authority citation for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q, 42 U.S.C. 1437f, 3535(d) and 8013.

20. In § 891.105, the definitions of *Annual Income*, *Total Tenant Payment*, and *Utility Allowance* are revised and a new definition of *Adjusted Income* is added to read as follows:

**§ 891.105 Definitions.**

\* \* \* \* \*

*Adjusted income* as defined in part 5, subpart F of subtitle A of this title.

*Annual income* as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

\* \* \* \* \*

*Total tenant payment* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Utility allowance* is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

21. In part 891, revise the heading of subpart E to read as follows:

**Subpart E—Loans for Housing for the Elderly and Persons with Disabilities**

22. In § 891.520, the definitions of *Gross Rent*, *Tenant Rent*, *Total Tenant*

*Payment*, *Utility Allowance*, and *Utility Reimbursement* are revised and a new definition of *Adjusted Income* is added to read as follows:

**§ 891.520 Definitions applicable to 202/8 projects.**

\* \* \* \* \*

*Adjusted income* as defined in part 5, subpart F of subtitle A of this title.

*Gross rent* is defined in part 5, subpart F of subtitle A of this title.

\* \* \* \* \*

*Tenant rent* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Total tenant payment* means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

*Utility allowance* is defined in part 5, subpart F of subtitle A of this title and is determined or approved by HUD.

*Utility reimbursement* is defined in part 5, subpart F of subtitle A of this title.

**PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM**

23. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

24. In § 982.201, paragraph (b)(3) is revised to read as follows:

**§ 982.201 Eligibility and targeting.**

\* \* \* \* \*

(b) \* \* \*

(3) The annual income (gross income) of an applicant family is used both for determination of income-eligibility under paragraph (b)(1) of this section and for targeting under paragraph (b)(2)(i) of this section. In determining annual income of an applicant family which includes persons with disabilities, the determination must include the disallowance of increase in annual income as provided in 24 CFR 5.617, if applicable.

\* \* \* \* \*

Dated: July 25, 2000.

Andrew Cuomo,  
Secretary.

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