

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 5

[Docket No. FR-4635-P-01]

RIN 2501-AC77

**Temporary Assistance for Needy
Families (TANF) Program; Conforming
Changes to Annual Income
Requirements for HUD's Public
Housing and Section 8 Assistance
Programs**

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update and clarify HUD's annual income requirements for its public housing and Section 8 assistance programs. Specifically, the proposed rule would clarify that annual income includes payments under the Temporary Assistance for Needy Families (TANF) program, but only to the extent such payments qualify as "assistance" under the TANF program regulations issued by the Department of Health and Human Services and are not otherwise excluded under HUD's regulation. HUD believes that the proposed clarifications will make the annual income requirements easier to understand for both program participants and public housing agencies. The proposed changes would ensure greater conformity between HUD's annual income requirements and the TANF program regulations.

DATES: *Comments Due Date:* June 19, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. 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: Patricia Arnaudo, Senior Programs Manager, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW., Room 4222, Washington, DC 20410; telephone (202) 708-0744 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via

TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Annual Income Requirements

HUD's regulations at 24 CFR part 5, subpart F establish requirements governing the determination of annual income of families who apply for, or receive assistance under, the Section 8 and public housing programs. The definition of "annual income" for these programs is located at § 5.609. The HUD regulations define "annual income" to mean all amounts, monetary or not, which:

- Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member;
- Are anticipated to be received from a source outside the family during the upcoming 12 month period; and
- Are not excluded under § 5.609(c).

Paragraph (b) of § 5.609 provides several examples of amounts considered annual income, including "welfare assistance" payments (see § 5.609(b)(6)). Additionally, § 5.609(b)(6) provides rules for determining the amount of income when the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual costs of these items. The term "welfare assistance" is defined at § 5.603, which states the definitions of terms used throughout 24 CFR part 5, subpart F. Specifically, this term is defined to mean "[w]elfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments."

B. "Assistance" Under the Temporary Assistance for Needy Families (TANF) Program

HUD's definition of "welfare assistance" at § 5.603 includes assistance provided under the Temporary Assistance for Needy Families (TANF) program. The TANF program was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193, approved August 22, 1996) (PRWORA). This legislation enacted comprehensive reforms that changed the nation's welfare system dramatically. The PRWORA reforms placed a new focus on moving recipients into work and time limits on assistance. The TANF block grant program replaced the existing welfare

program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The TANF program is administered by the U.S. Department of Health and Human Services (HHS), which has issued implementing regulations in parts 260 through 265 of title 45 of the Code of Federal Regulations. The HHS regulations were established by final rule published on April 12, 1999 (64 FR 17720). The HHS final rule followed publication of a November 20, 1997 proposed rule (62 FR 62124) and took into consideration the public comments received on the proposed rule. The final rule became effective on October 1, 1999.

The TANF program regulations define the term "assistance" at 45 CFR 260.31:

§ 260.31 What does the term "assistance" mean?

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

The regulation at 45 CFR 260.31(b) also specifies what types of benefits are not considered "assistance" for purposes of the TANF program:

(b) [The term "assistance"] excludes:

(1) Nonrecurrent, short-term benefits that:

- (i) Are designed to deal with a specific crisis situation or episode of need;
- (ii) Are not intended to meet recurrent or ongoing needs; and
- (iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

II. This Proposed Rule

This proposed rule would make two changes designed to clarify the relationship between HUD's annual income requirements for its Section 8 and public housing programs, and the TANF program definition of "assistance." First, the proposed rule would clarify that the term "welfare assistance," for purposes of calculating annual income, includes TANF payments, but only to the extent such payments meet the definition of "assistance" under 45 CFR 260.31 and are not otherwise excluded under § 5.609(c).

The proposed rule would also make a clarifying amendment to the definition of "welfare assistance" at § 5.603. Specifically, the proposed rule would clarify that welfare assistance includes TANF "assistance," as that term is defined by the HHS regulation at 45 CFR 260.31.

HUD believes that the proposed clarifications will make the annual income requirements easier to understand for program participants and public housing agencies. The proposed amendments will also ensure greater conformity between the annual income requirements and the TANF program regulations.

III. HUD Public Housing and Welfare Coordination Efforts

In May 2000, HUD issued Notice PIH 2000-11 providing guidance (including a model cooperation agreement) on the collaboration between public housing agencies (PHAs) and welfare (TANF) departments to implement the Quality Housing and Work Responsibility Act of 1998 (Title V of the Fiscal Year 1999 HUD Appropriations Act; Public Law 105-276, approved October 21, 1998) (QHWRA). This guidance was coordinated with HHS and sent to all HUD and HHS field offices, as well as to PHAs and TANF agencies. During 2000, HUD provided training for PHAs and public housing residents on QHWRA, which included Notice PIH 2000-11. HUD invites comments on the use of Notice PIH 2000-11, as well as on whether other guidance and training is needed to effectuate further public housing and welfare coordination.

IV. 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. 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.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by 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 would 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 (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 would 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.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for these programs are 14.850 and 14.871.

List of Subjects in 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.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 5 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

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

Subpart F—Section 8 and Public Housing; Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

2. The authority citation for subpart F continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, and 3535(d).

3. In § 5.603(b), revise the definition of "Welfare assistance" to read as follows:

§ 5.603 Definitions.

* * * * *

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31.)

* * * * *

4. Revise § 5.609(b)(6) to read as follows:

§ 5.609 Annual income.

* * * * *

(b) * * *

(6) Welfare assistance payments.
 (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:
 (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and
 (B) Are not otherwise excluded under paragraph (c) of this section.
 (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that

is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities.

If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

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Dated: April 12, 2001.

Mel Martinez,
Secretary.

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