

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 5, 92, and 908

[Docket No. FR-4998-F-02]

RIN 2501-AD16

**Refinement of Income and Rent
Determination Requirements in Public
and Assisted Housing Programs; Final
Rule**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's public and assisted housing program regulations to implement the upfront income verification (UIV) process and to require the use of HUD's Enterprise Income Verification (EIV) system by public housing agencies (PHAs), and multifamily housing owners and management agents (O/As), when verifying the employment and income of program participants at the time of all reexaminations or recertifications. This final rule will ensure that deficiencies in public and assisted housing rental determinations are identified and cured. This final rule is consistent with HUD's comprehensive strategy under the Rental Housing Integrity Improvement Project (RHIP) initiative to reduce the number and dollar amount of errors in HUD's rental assistance programs. This final rule follows publication of a June 19, 2007, proposed rule, and makes certain changes at this final rule stage in response to public comment and further consideration of certain issues by HUD.

DATES: *Effective Date:* March 30, 2009.

FOR FURTHER INFORMATION CONTACT: For Office of Public and Indian Housing programs, contact Nicole Faison, Director of the Office of Public Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410, telephone number 202-708-0744. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410, telephone number 202-402-2473. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 6 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d

and 1437f), section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), sections 221(d)(3), 221(d)(5), and 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z-1), section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013), and section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) authorize HUD to provide financial assistance in the form of rent subsidies for participants in HUD's public and assisted housing programs. The regulations implementing this authority are located in parts 5, 236, and 891 of Title 24 of the Code of Federal Regulations.

As part of the procedures for determining proper rent subsidies, PHAs and O/As must conduct income verifications for applicants and participants in covered HUD programs. As a condition for obtaining financial assistance, HUD requires the disclosure and verification of Social Security Numbers, Employer Identification Numbers, and citizenship or eligible immigration status. With few exceptions, HUD cannot make financial assistance available to applicants and participants who do not have eligible status with respect to citizenship or who have noncitizen immigration status. However, temporary deferrals of financial assistance termination may be allowable in limited circumstances.

In addition to these eligibility requirements, HUD requires the determination of annual and adjusted income of applicants and participants who apply for or receive assistance in the public and assisted housing programs. In part, "annual income" means all income amounts that a family anticipates to receive in the 12-month period following admission or a participant's reexamination or recertification effective date. Furthermore, PHAs and O/As are required to electronically submit family characteristics data to HUD through certain forms.

II. The June 19, 2007, Proposed Rule

On June 19, 2007, at 72 FR 33844, HUD published for public comment a proposed rule to revise HUD's public and assisted housing program regulations, by requiring PHAs and O/As to conduct UIV of participants in assistance programs through the use of HUD's EIV system. The purpose of the proposed regulatory amendments was to address HUD's priority of reducing errors, including overpayment of subsidy to PHAs and O/As, caused by incorrect income determinations and rent calculations in HUD's public housing program, and in tenant-based

and project-based rental assistance programs.

For more detail on the proposed revisions to HUD's public and assisted housing program regulations, please see the preamble of the June 19, 2007, proposed rule.

III. This Final Rule; Changes to the June 19, 2007, Proposed Rule

In response to public comments, discussed in section IV of this preamble, and following further consideration of several aspects of the proposed rule, HUD has made certain changes at this final rule stage. This section of the preamble highlights some of the more significant changes.

1. *Social Security Numbers of participants.* The final rule provides that each participant whose initial determination of eligibility was before the effective date of the final rule must submit their Social Security Number at the next interim or regularly scheduled reexamination or recertification.

2. *Social Security Numbers of new household members.* The final rule provides that if the participant's household adds a new member, including a child or children, the participant must submit the new member's Social Security Number at the time of the request for assistance or at the time of processing the interim reexamination/recertification of family composition.

3. *Waiting list position retained despite failure to provide Social Security Number.* The final rule has been revised to allow applicants who cannot provide Social Security Numbers for all family members to retain their place on the waiting list for the program; however, all members of the household must provide appropriate documentation of his or her Social Security Number before the household is admitted into the program. The final rule removes the proposed rule language permitting the applicant to participate in the program, provided it submits to the processing entity appropriate documentation within 60 days from the date of admission into the program. HUD recognizes, however, that homeless persons face additional challenges in obtaining appropriate documentation of their Social Security Number. Thus, in this final rule, HUD has created an exception for applicants receiving assistance under the section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals. Such applicants have 90 days after admission into the program to provide appropriate documentation, with discretion given to the processing

entity to extend this period for an additional 90 days.

4. *Removal of pro-rata rental assistance provisions.* The proposal to prorate rental assistance for family members who do not have Social Security Numbers was not adopted by the final rule.

5. *Required use of HUD's EIV system.* The final rule requires PHAs and O/As to implement and use HUD's EIV system for verifying income of current participants only. For multifamily housing O/As, implementation of the use of EIV will commence 6 months after the effective date of this final rule to allow them additional time to become as familiar with using the EIV system as their PHA counterparts and to prepare for the full implementation of EIV. The public may view the System of Records notice and Privacy Impact Assessment for the EIV system at http://www.hud.gov/offices/cio/privacy/documents/fed_reg_sornotice_eiv.pdf and <http://www.hud.gov/offices/cio/privacy/pia/eiv.pdf>, respectively.

6. *Required verification of U.S. citizenship or nationality.* The final rule requires that the responsible entity obtain verification of the signed declaration of U.S. Citizenship or U.S. nationality.

7. *Discretion to use either actual past income or projected future income.* The final rule gives PHAs and O/As discretion to use either actual past income or projected future income for purposes of calculating annual income.

8. *Calculation of annual income under the HOME program.* The final rule requires participating jurisdictions in the HOME Investment Partnerships Act Program (HOME Program) to determine the time period for calculating a family's annual income in accordance with § 5.609. However, participating jurisdictions may continue to use one of the three definitions of "annual income" permitted by § 92.203(b).

9. *Other technical changes.* In addition to the changes described above, HUD has taken the opportunity afforded by the final rule to make other nonsubstantive, technical, changes to the regulatory language for purposes of clarity and organization.

IV. Discussion of Public Comments Received on the June 19, 2007, Proposed Rule

The public comment period for the June 19, 2007, proposed rule closed on August 20, 2007. HUD received 34 public comments. HUD received public comments from a variety of sources, including: Individuals; PHAs; national PHA and redevelopment organizations;

affordable housing advocacy associations; and immigration policy groups.

The following provides a summary of the significant issues raised by the public commenters on the June 19, 2007, proposed rule, and HUD's response to those issues.

A. General Comments

Comment: Three commenters, although generally in support of HUD's goal of reducing errors in the calculation of rental subsidy, wrote that the proposed rule would result in increased administrative burdens and requirements on PHAs and O/As. Examples of increased administrative burdens include: Changes in software, model leases, and training; increases in document collection responsibilities by PHAs, individuals, and households; and extensive revisions to current operating procedures.

HUD Response: HUD is sympathetic to concerns regarding the administrative burdens imposed by its regulations, and strives to minimize such burdens in the development of new regulatory policy. HUD does not agree with the commenters that the regulatory changes will increase administrative burden. Rather, the final rule will, in many instances, reduce the administrative requirements for PHAs and O/As. For example, the income verification processes will be reduced with the use of the EIV system. PHAs and O/As in many instances will not be required to obtain written verification of employment, wages, unemployment compensation, and Social Security benefits from third-party income sources, so long as the PHA or O/A obtains and maintains documentation of EIV system consultation/usage. PHAs and O/As may accept tenant-provided documentation, and this documentation will meet HUD's requirement for obtaining third-party verification when supplemented by the EIV income report and/or, for PHAs, the EIV individual control number, in the tenant file.

Comment: Two commenters urged HUD to delay development of the final rule until the future of the section 8 Voucher Reform Act (SEVRA, H.R. 1851) in Congress is clear. SEVRA would make several major policy and procedural changes to HUD's housing assistance programs. The commenters suggested that HUD consider holding off on rulemaking until it is clear what will happen legislatively, or that HUD limit the changes in the regulation to the bare minimum of what it believes is necessary, in order to minimize the disruption and costs that would otherwise result from having to

implement two sets of potentially conflicting changes within a short time frame.

HUD Response: The purpose of this rulemaking is to strengthen income and rent integrity, thereby reducing overpayments. To delay issuance of the final rule would delay significant reductions in the level of improper payments within HUD's rental assistance programs.

B. Comments Specific to Proposed Amendments to § 5.216

Comment: Two commenters questioned HUD's authority under section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543) to deny housing assistance to an otherwise eligible individual or household because the individual has not been assigned a Social Security Number. The commenters also wrote that the changes to § 5.216 in the proposed rule contradict HUD's previous interpretation of 42 U.S.C. 3543, in which HUD required the disclosure only of assigned Social Security Numbers.

HUD Response: HUD has not revised the rule in response to these comments. HUD has determined that the legal authority exists to deny housing assistance to individuals and households who have failed to disclose his or her Social Security Number. HUD believes this regulatory change is essential to assuring the financial integrity of its rental assistance programs.

Typically, individuals who are U.S. citizens or who are in this country legally possess a Social Security Number. Based on HUD's analysis of participant data in its public and Indian housing (PIH) programs, there are 290,043 individuals who have invalid Social Security Numbers¹ and 54,612 individuals who have not disclosed a Social Security Number. Thus, 344,655 individuals out of a total of 7,570,271 individuals (nationwide), or 5 percent of individuals, may not have disclosed an accurate and complete Social Security Number. To prevent fraud and abuse within HUD rental assistance programs, HUD is seeking to terminate assistance to those individuals who have not disclosed a valid Social Security Number.

¹ The Social Security Administration (SSA) has determined that 38,269 of these individuals have an invalid Social Security Number (SSN). Some of these errors may be attributed to PHA data entry errors. Through its internal HUD pre-screening process, HUD has determined that the PHA-reported SSN for the remaining 251,774 individuals is invalid because the reported number does not meet SSA standards as a valid SSN.

Based on HUD's analysis of participant data in its Office of Housing programs, there are 29,074 individuals out of a total 2,186,268 individuals nationwide who have invalid Social Security Numbers (the Social Security Number for 1,542 of these individuals is invalid because the reported number does not meet the standards of the Social Security Administration (SSA) as a valid Social Security Number, and the remaining 27,532 are individuals who have not disclosed a Social Security Number). Thus, 1.3 percent of individuals may not have an accurate and complete Social Security Number. To prevent fraud and abuse within HUD's multifamily rental assistance programs, HUD is seeking to terminate assistance to those individuals who have not disclosed a valid Social Security Number. It should be noted that HUD's use of Social Security Numbers is for the purpose of ensuring that limited federal resources serve as many eligible individuals and families as possible. As previously publicized in its **Federal Register** notices, HUD has implemented appropriate privacy safeguards to protect each Social Security Number collected and utilized for identity and income-matching purposes. The public should be assured of HUD's commitment to safeguarding individuals' private information.

Comment: One commenter wrote that HUD's proposal to prorate assistance for households in which one or more members do not have an assigned Social Security Number is at cross-purposes with current statutory (42 U.S.C. 1436a) and regulatory (24 CFR 5.518(b)) authorities that permit a temporary deferral of full assistance to households who have a refugee or asylum application pending final adjudication.

HUD Response: As noted above in this preamble, HUD has, upon reconsideration, decided not to make final the provisions of the proposed rule regarding the proration of assistance based upon failure to submit a Social Security Number.

HUD must comply with the provisions of 42 U.S.C. 1436a, which provide restrictions on use of assisted housing by non-resident aliens. Eligible for financial assistance under this statute are U.S. residents who are refugees (or aliens who are lawfully present in this country pursuant to admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157)), and aliens who are granted asylum under section 208 of this statute (8 U.S.C. 1158). Aliens in these groups are covered under 24 CFR 5.500. These individuals would have Social Security Numbers.

Until the family members have been determined to have eligible status (*i.e.*, their applications are no longer pending), they are not authorized under the regulations to receive rental assistance. Such individuals may be eligible for a temporary deferral of termination of assistance—*i.e.*, temporary deferral of eviction. Proration of rental assistance, however, is not an option if the family member(s) do/does not have eligible status, since there would be no assistance to prorate.

Comment: Three commenters urged HUD to permit a phase-in period for the required disclosure and verification of Social Security Numbers, especially for children under 6 years of age who do not have Social Security Numbers or cards. One commenter suggested a 2-year implementation period, in order to provide for adequate notification of participants.

HUD Response: Based on HUD's analysis of participant data, there are a small number of children under the age of 6 without a Social Security Number. The proposed rule provided for a phase-in period of not more than one year. Upon the effective date of the final rule, PHAs and O/As must notify the affected households of this policy. As of August 21, 2008, there are approximately 62,246 individuals under the age of 6 who would be impacted by the final rule. In the Office of Housing's programs, as of September 9, 2008, there are 21,083 individuals under the age of 6 who will now be required to have a Social Security Number as a result of the final rule. Based on the minimal amount of time it takes to apply for and receive a Social Security Number and card, it is in the best interest of HUD to limit the phase-in period to no more than one year.

Comment: One commenter suggested that, if applicants for housing assistance must disclose their Social Security Number at the time of application, the same procedure should apply to new household members seeking to become participants, rather than forcing them to wait until the next interim or regularly scheduled examination.

HUD Response: HUD agrees with this comment, and has incorporated this suggestion into the final rule.

C. Comments Specific to Proposed Amendments to § 5.218

Comment: Four commenters raised the issue about the effect of proposed revisions to § 5.218 on "mixed families," defined as those households that have a member who is unable to obtain documentation of a Social Security Number. Because proposed § 5.218 does not allow for proration of

housing assistance to applicants, the commenters expressed concern that the final rule would exclude such mixed families from housing assistance programs, even using a prorated assistance structure.

HUD Response: The final rule has been revised to allow applicants who cannot provide Social Security Numbers for all family members to be admitted to the waiting list; however, the head of household must disclose his or her Social Security Number. In addition, all members of the household must disclose his or her Social Security Number before the household is admitted to assisted housing.

Comment: Four commenters wrote that the language concerning proration of assistance in § 5.218 and the interplay between the assistance provisions in § 5.216 and § 5.218 was confusing. For example, proposed § 5.216 would require the disclosure of Social Security Numbers and verification and documentation for all household members. However, proposed § 5.218 would permit "mixed participant households" to receive prorated housing assistance when the ineligible person is residing in the unit.

HUD Response: HUD agrees with this comment, and has revised § 5.218 to remove references to proration of assistance, and references to mixed families.

Comment: One commenter agreed that proration of assistance can be appropriate where some, but not all, household members provide Social Security Numbers with appropriate documentation and verification. However, the commenter also suggested that PHAs and owners should inquire into whether there may be extenuating circumstances that warrant other, more appropriate, relief.

HUD Response: The final rule provides ample time for affected parties to disclose and submit adequate documentation of his or her SSN, and references to proration have been removed.

Comment: One commenter suggested that the final rule should more clearly give PHAs the right to deny participation in the assisted housing programs unless and until all Social Security Numbers have been submitted and documented for each household member.

HUD Response: HUD has not revised the rule in response to these comments. The change suggested by the commenter might have the unintended consequence of creating vacancies or homelessness as a result of current participants not having a Social Security Number. The intent of the final rule is to notify

affected families and require a specified time frame to submit the Social Security Numbers.

D. Comments Specific to Proposed Amendments to § 5.233

Comment: Many commenters expressed concerns over the proposed mandated use of upfront income verification techniques, either through use of HUD systems (such as the EIV system) or by implementing direct computer matching agreements with a federal, state, or local government agency or a private agency. The commenters specifically noted current problems with the EIV system, such as: The significant lag time in the provision of income data, especially for new applicants; a restriction on the use of income data older than 12 months; and the inability to verify certain types of income through EIV, including asset information, self-employment income, and other government assistance. The commenters wrote that HUD should perfect the EIV system, including addressing the aforementioned problems, before mandating its use.

HUD Response: HUD has taken steps to enhance the performance of its EIV system. Improvement of the EIV system is an ongoing process, and HUD welcomes comments and suggestions from PHAs and O/As on possible future changes to the system. As noted above in this preamble, the final rule requires use of the EIV system for verifying income sources maintained in the EIV system of current participants only. The use of the EIV system will be required to ensure that participants have disclosed all income sources that are verifiable through HUD computer-matching programs.

Comment: Two commenters wrote that mandating UIV use would be cost-prohibitive. One commenter wrote that small PHAs will not have the administrative funds necessary to pay for computer-matching agreements with other agencies. One commenter requested that § 5.233 not be applied to programs administered or sponsored by nonprofit housing agencies. By requiring the use of a particular vendor or software, HUD would be increasing costs for small nonprofit housing providers, and rents are not sufficient to support these additional costs.

HUD Response: HUD is sympathetic to the cost concerns raised by the commenters and has revised the rule to address this issue. Specifically, the final rule requires PHAs and O/As to use HUD's EIV system, which HUD provides to program administrators at no cost.

Comment: One commenter suggested that there is no statutory authority for

portions of the data available in the EIV system to be made readily accessible to multifamily property owners and contract agents who administer HUD's multifamily housing programs. The commenter noted that, although HUD and PHA representatives may have direct access to wage, employment, and Social Security income data, such access by multifamily owners or agents should be granted only after notice-and-comment rulemaking.

HUD Response: HUD has not revised the rule in response to this comment. Sections 453(j)(7)(E)(iv)(I) and (II) of the Social Security Act (42 U.S.C. chapter 7) authorize HUD to disclose information from the computer-matching program to a private owner, a management agent, and a contract administrator after appropriate safeguards have been put in place.

Comment: One commenter expressed concern about the ability to share tenant or participant EIV data with affected tenants or participants, even when an adverse action is being taken against the tenant or participant based on the EIV data. The commenter suggests that HUD add the following language to § 5.233, which is currently found in HUD Handbook 4350.3, REV-1, CHG-2: "The applicant's or tenant's file should be available for review by the applicant or tenant upon request or by a third party who provides signed authorization for access from the applicant or tenant."

HUD Response: HUD has not revised the rule in response to this comment. In accordance with the Federal Privacy Act (5 U.S.C. 552a), including HUD's regulations implementing the Federal Privacy Act at 24 CFR part 16, and 24 CFR 5.236(b)(3)(ii), the PHA and O/A are authorized to: (1) Provide the tenant with information obtained from a computer-matching program; and (2) verify such information with the tenant.

Comment: Three commenters discussed the proposed language in § 5.233(b) involving penalties, including sanctions, for noncompliance with the mandated use of UIV techniques. The commenters expressed concern about what the commenters perceived to be open-ended or undefined penalties for noncompliance. The commenters wrote that safe harbor provisions, including a reasonable implementation period, should be included in the final rule.

HUD Response: HUD has not revised the rule in response to these comments. Ninety-eight percent of all active PHAs already have access to EIV. The final rule provides for a 6-month transition period before use of the EIV system becomes mandatory for multifamily housing. This transition period will allow for O/As to become more familiar

with using the National Directory of New Hires (NDNH) data, which has been available to O/As only since January 2008.

E. Comments Specific to Proposed Amendments to § 5.508

Comment: One commenter suggested that section 8 housing assistance be available only to U.S. citizens and legal immigrants. The commenter also suggested that if applicants for housing assistance cannot provide the required documentation, they should be denied assistance immediately whether or not they have legal family residing in this country.

HUD Response: The regulations at 24 CFR part 5, subpart E, implement the requirements of section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a(a)). Section 214(a) provides that notwithstanding any other applicable provision of law, the Secretary may not make financial assistance available for any alien unless that alien is a resident of the United States and one of seven categories of eligible aliens. Pursuant to section 214(b)(1), "financial assistance" includes "assistance made available pursuant to the United States Housing Act of 1937." Section 214(b)(2) provides that:

If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the eligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

A "mixed family" is defined under the regulations (24 CFR 5.504), to mean a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Comment: Three commenters wrote that the requirements for proof of citizenship are extremely burdensome to residents already participating in the program (particularly those who may be elderly or disabled, have limited English proficiency, or who are victims of domestic violence, dating violence, stalking, or sexual assault) and to PHAs and owners who must verify such citizenship status. Two commenters suggested that, by requiring proof of citizenship, HUD is taking away the PHAs' discretion in establishing program standards.

HUD Response: Verification of citizenship status is statutorily required. Further, the majority of participants and applicants already have the necessary proof of citizenship or eligible noncitizen status. HUD also provides program administrators use of the Systemic Alien Verification for Entitlements (SAVE) system to assist in the verification of non-U.S. citizens' immigration status.

Comment: Three commenters raised questions regarding the meaning of "eligible immigration status" and the type of documentation, including submission of documentation electronically, that would be acceptable in meeting the requirements of § 5.508. The commenters requested that HUD clarify "eligible immigration status" to ensure that immigrant victims of domestic violence and Cuban/Haitian immigrants are eligible for federal housing assistance. Moreover, the commenters urged HUD to clarify that the list of documents in § 5.508(b) is an illustrative, rather than exhaustive, list, since many types of documents serve to establish eligible, non-citizen status.

HUD Response: Any immigrant who is lawfully in this country and meets other program eligibility requirements is eligible to participate in HUD's rental assistance programs. HUD's list of acceptable documents for eligible immigration status will reflect those documents referenced by the Department of Homeland Security (Bureau of Immigration and Customs Enforcement), as prescribed in HUD administrative instruction and guidance.

Comment: Two commenters suggested that HUD establish time frames for the tenant to obtain and provide the necessary citizenship documentation, and for PHAs to implement the documentation requirement.

HUD Response: HUD has not revised the rule in response to these comments. However, HUD may issue administrative guidance as questions arise regarding implementation of this final rule, or as HUD may otherwise determine is necessary, to assist affected parties in complying with the new regulatory requirements.

Comment: One commenter stated that the current regulations governing assistance to non-citizens are very difficult to interpret, and that the proposed revisions at § 5.508 do not improve the clarity. The commenter suggests that HUD rewrite the regulations at 24 CFR part 5, subpart E, Restrictions on Assistance to Noncitizens, to make them easier to understand and follow.

HUD Response: HUD has not revised the rule in response to these comments. As noted in the response to the preceding comments, HUD may issue administrative guidance at a later date to assist affected parties in complying with the new regulatory requirements.

F. Comments Specific to Proposed Amendments to § 5.518

Comment: One commenter suggested that, instead of eliminating temporary deferrals of termination of assistance for families with noncitizen members, such temporary deferrals should be expanded. Because obtaining the necessary documentation for all family members can be time-consuming and expensive, the commenter wrote that the proposed revisions would be a further constraint on noncitizens and cause temporary homelessness.

HUD Response: HUD must ensure that all individuals in the program are eligible. Only those individuals who need to be verified would incur the cost of obtaining documentation. In addition, the PHA or O/A may at its discretion extend the time period to obtain documentation, which may enhance the individuals' ability to afford the expense. The 18-month deferral period was a sufficient length of time and has long since elapsed. With the exception of refugees and persons seeking asylum, families with temporary deferral of termination of assistance with noncitizen members should no longer be receiving housing assistance.

G. Comments Specific to Proposed Amendments to § 5.609

Comment: Several commenters wrote that, because HUD's EIV system does not capture "actual time" data, the proposal in § 5.609 to amend the current definition of annual income, from anticipated "future income" to "actual income," is not compatible with the method of collecting individuals' actual income. The commenters suggested that until such time as the EIV system can be used to verify current income, the definition of annual income should not be changed. One commenter suggested that HUD permit PHAs to rely on EIV data for the purpose of determining annual income, unless it possesses credible information that such data are not accurate.

HUD Response: The final rule gives the PHA or O/A the discretion to use either actual past income or projected future income to minimize possible errors in the reexamination/recertification system (for example, where a tenant quits a job before reexamination/recertification and assistance is calculated at a higher

level). PHAs and O/As may use actual past annual income from EIV, so long as the tenant does not dispute the income information and current tenant-provided documentation or third-party verification does not suggest higher income in the next 12 months.

Comment: Several commenters wrote that although the rationale for using past income is that it is a known amount, anticipated future income more accurately reflects what applicants and participants are receiving when they are seeking housing assistance. One commenter suggested that PHAs or owners look at the previous year's tax return to determine "annual income."

HUD Response: As noted in the preceding response, the final rule gives the PHA or O/A the discretion to use either actual past income or projected future income to minimize errors in the reexamination/recertification system. The use of information from the previous year's tax returns is not an effective method of determining annual income because tenants may not file tax returns.

Comment: Four commenters wrote that the change in the "annual income" definition would increase the administrative workload and the complexity of verifying actual income received, and that PHAs would lose money and would need increased operating subsidy while complying with the new requirements. One commenter suggested that HUD provide grants to PHAs that are earmarked for implementing investigative and paralegal staffing to combat program fraud and abuse.

HUD Response: The final rule gives the PHA or O/A the discretion to use either actual past income or projected future income. PHAs and O/As may use actual past annual income from EIV, so long as the tenant does not dispute the income information and current tenant-provided documentation, or third-party verification does not suggest higher income in the next 12 months.

Comment: Two commenters focused on the new requirement in § 5.609(b) for PHAs to "annualize the income data to determine the family's income for the 12-month period." One commenter asked HUD to clarify what it meant by "annualize the income data." One commenter urged HUD to strike this new requirement and consider issuing guidance that encourages sponsors to use newer information if it reflects substantial changes in household income.

HUD Response: "Annualize the income data" means to convert periodic income to an annual amount. For example, if the PHA or O/A determines

that the tenant's monthly income is \$500, this amount should be multiplied by 12 to compute an annual amount of \$6,000. Again, the final rule provides the PHA or O/A with the discretion to use either actual past income or projected future income to minimize errors in the reexamination/recertification system. PHAs and O/As may use actual past annual income from EIV, so long as the tenant does not dispute the income information and current tenant-provided documentation, or third-party verification does not suggest higher income in the next 12 months.

Comment: One commenter asked HUD to clarify whether income generated from assets should be considered as income from the previous 12 months or as "anticipated future income."

HUD Response: The regulation for determination of income from assets is not being changed, and references the 12-month period in § 5.609(a)(2), which is the 12-month period following admission or recertification effective date. Accordingly, income from assets is "anticipated future income."

Comment: One commenter requested that HUD provide guidance and standards for PHAs and owners to follow when dealing with "atypical income situations," such as: A loss of employment, waiting periods for Social Security income, welfare payments, zero income, and self-employment.

HUD Response: The PHA's interim policy and multifamily housing's interim policy defines how the PHA or O/A will deal with atypical income situations. HUD encourages PHAs and O/As to implement policies that will minimize unwarranted zero or minimum rents.

Comment: One commenter wrote that HUD should ensure that proposed § 5.609(a) properly follows the statutory definition of "income" at 42 U.S.C. 1437a(b)(4) and thus exclude "any amounts not actually received by the family." The commenter also requested that HUD make all necessary technical changes in the regulation to account for incorrect cross-references.

HUD Response: The current regulatory definition makes reference to the term of income "anticipated to be received." The proposed rule removes the term anticipated, which results in counting only income, received by the family. This change is consistent with the statutory definition of the term "income," and HUD has not revised the rule in response to this comment.

Comment: One commenter wrote that some PHAs and owners may misinterpret the language in § 5.609(b)

to mandate interim reporting or adjustment of rent for increases in income that occur in between annual recertifications. The commenter urged HUD to clarify that the proposal is not intended as a substantive change to interim reporting and rent adjustment requirements, and that PHAs and owners should follow their existing policies or HUD guidance regarding when interim reporting or rent adjustment is required for increases in income.

HUD Response: The final rule does not mandate interim reexaminations, but gives the PHA the discretion to determine annual income using actual past annual income or projected future income based on current income. The PHA has discretion in developing interim increase reexamination policies; however, O/As do not. While these types of policies are helpful in reducing income reporting errors, HUD does not require PHAs to adopt interim increase reexamination policies. O/As must continue to follow existing policies for conducting interim recertifications.

Comment: One commenter suggested that HUD allow PHAs to accept recertifications of income performed by other federal, state, or local government entities for purposes of determining the annual income of applicant households and recertifications of participant households.

HUD Response: HUD has not revised the rule in response to this comment. Third-party recertifications for other benefits from other federal, state or local entities may not be effective due to the different program requirements in determining eligibility.

Comment: One commenter suggested that HUD give PHAs the discretion to rely on (or to reject) evidence of recent income changes when determining annual income. The commenter wrote that some program participants have been known to manipulate their income temporarily before annual recertifications, in order to reduce their rent obligation.

HUD Response: HUD does support PHA and O/A discretion in accepting or rejecting changes in family income. PIH published guidance in 2004, PIH Notice 2004-01 (located at <http://www.hud.gov/offices/pih/>), which requires the tenant to provide acceptable documentation to the PHA. Multifamily housing has guidance in Chapter 7 of Handbook 4350.3 REV-1. Furthermore, this final rule allows the PHA and O/A the flexibility and discretion to use either actual past annual income or projected future income based on current income. This flexibility will enable PHAs and O/As to

minimize the occurrence of tenant income manipulation and ensure that participants pay their fair share of rent. It should be noted that the EIV system, as well as income information derived from the Social Security earnings statement (use SSA form-7004 available at <http://www.ssa.gov> to obtain this information) can provide the PHA and O/A with historical annual earned income of a participant. HUD recognizes that there are atypical situations in which an individual's income may fluctuate as a result of seasonal and sporadic employment, or in which a participant intentionally discontinues employment prior to an interim or annual reexamination or recertification, in order to minimize his or her contribution to rent, thus avoiding the imposition of a higher rental subsidy on the individual's family. PHAs and O/As are encouraged to utilize income information provided by HUD and available from other federal, state, and local agencies, as well as from private sector entities (such as The Work Number) to improve the integrity of income, or lack of income, reported by families.

H. Comments Specific to Proposed Amendments to § 92.203

Comment: One commenter wrote that the income determination under the HOME program should be based on the prior 12-month period, because "anything else is too confusing and the HOME Program is confusing enough as it is."

HUD Response: HUD has changed the proposed rule to require participating jurisdictions to calculate a family's annual income based on the actual income being received at the time the participating jurisdiction determines the family is income eligible, projected forward for a 12-month period. However, if the participating jurisdiction is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the participating jurisdiction may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. This provides the participating jurisdiction with the discretion needed to respond to a variety of family situations.

Comment: One commenter wrote that the proposed requirements in § 92.203 are a duplication of effort because, absent an accessible and constantly updated source of income data for the previous 12 months, participating jurisdictions must contact employers or review paycheck stubs to verify such

income, which must then be verified to determine if the income is different from the previous 12 months. The commenter also recommended that HUD amend the HOME regulations to permit subrecipients and developers using HOME funds to perform income determinations on behalf of the HOME participating jurisdiction.

HUD Response: HUD has changed the rule to require participating jurisdictions to calculate a family's annual income based on the actual income being received at the time the participating jurisdiction determines the family is income eligible, projected forward for a 12-month period. However, the final rule also gives program administrators the discretion to use a family's past actual income when the program administrator is unable to project the family's annual income based on current verified income information. This is most useful in situations where it is difficult for the participating jurisdiction to accurately determine a family's projected annual income due to fluctuations in the family's income or because the family reports little or no income.

Subrecipients are nonprofit organizations and public agencies that are under contract with the participating jurisdiction to administer HOME programs on the participating jurisdiction's behalf. The HOME regulations already permit subrecipients to perform income determinations for the participating jurisdiction. However, developers are not under contract to perform the functions of the participating jurisdiction and are not permitted to perform those functions independent of the participating jurisdiction. While these entities cannot perform income determinations, they can collect income documentation for the participating jurisdiction to review. As such, no further changes to 24 CFR part 92 are required at this time.

I. Comments Specific to Proposed Amendments to § 908.101

Comment: One commenter suggested that HUD strike the proposed language in § 908.101 requiring sponsors to retain form HUD-50058 during the term of each assisted lease and for at least 3 years thereafter. The commenter argued that PHAs should not be required to maintain such form in the files, and that compliance with standards in state law and imposed by audit requirements are sufficient to protect HUD's interests.

HUD Response: HUD is requiring the PHA to maintain the form HUD-50058 in its tenant's files (either electronically or paper) to ensure that information transmitted to HUD is consistent with

what is on file at the PHA. Previous PHA audits have in some instances revealed significant disparities between the actual PHA transaction and the transaction transmitted to HUD via the Public and Indian Housing Information Center (PIC) system.

Comment: Two commenters opposed the change to require paper copies of each Form HUD-50058 in the tenant's file. The commenters wrote that such a requirement would impose administrative burden and additional expense for PHAs and staff. Moreover, the commenters wrote that the information is readily available electronically. One commenter suggested that PHAs be required to keep only the most recent 2 years of form HUD-50058, and to maintain the file for 3 years after move-out.

HUD Response: The rule does not require paper copies of the form HUD-50058. The PHA has discretion to determine how they will maintain the form HUD-50058. PHAs are encouraged to retain electronic copies of the form.

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 ("entitled Regulatory Planning and Review"). This rule was determined to be economically significant under E.O. 12866, and a regulatory impact analysis has been prepared for this rule.

At both the proposed rule and this final rule stage, HUD determined that implementation of the regulations proposed and now promulgated through this final rule could result in transfers of funding to and among stakeholders of more than \$100 million per year. Findings from an ongoing HUD study indicate that the gross transfer resulting from eliminating all the under- and over-payments of rents is approximately \$925 million (\$584 million in rent subsidy overpayment and \$341 million in rent subsidy underpayment). Of these amounts, about \$138 million in rent subsidy overpayment and \$17 million in rent subsidy underpayment are attributable to errors in earned income reported to, or recorded by, program administrators, as determined by the study interviewers. In addition, income matches with the National Directory of New Hires (NDNH) reports an additional \$359 million in rent underpayment due to tenants' failure to report income to program administrators and the study interviewers. If the rule succeeds in reducing gross errors found in the study by at least 20 percent, the

gross transfers among HUD-assisted tenants would be above the \$100 million annual threshold. The majority of the financial and economic impact of the final rule would result from the implementation and use of upfront verification of income to ensure truthful and correct reporting and recording of tenants' income. The anticipated impacts of this rule are discussed more fully in the regulatory impact analysis that accompanies this rule.

It should be noted that the implementation of this final rule would improve the integrity of HUD's rental assistance programs and would result in some transfer. However, it may not necessarily lead to a reduction in subsidy needs and could in fact lead to a needed increase in the program funding to maintain the number of households served by the programs. The EIV system is already available and being used by program administrators. Therefore, this final rule would not impose significant additional costs.

Assuming the rule is 100 percent effective in eliminating earned income-based rent errors, if no over-subsidized tenants left the program in response to rent increases based on correct determination of earned income, then the net transfer to new tenants would be about \$480 million per year, resulting in approximately 92,284 new tenants served (assuming an average total subsidy per tenant of \$5,091 per year). At the other extreme, if all households who were over-subsidized due to earned-income error left HUD-assisted housing in response to rent corrections under the rule, the transfer to new tenants would amount to approximately \$1,715,667,000 per year, resulting in about 337,000 new tenants served, assuming the same average subsidy costs.

Notwithstanding, it is not realistic to expect the rule to be 100 percent effective, since there is no realistic basis for assessing a range of effectiveness away from a range of \$0 to \$480 million. There is also no basis for assessing the primary estimate. For all of these reasons, \$1.715 million would represent the high estimate (assuming 100 percent effectiveness and 100 percent of existing tenants leave replaced by 337,000 new tenants) and \$0 would represent the low estimate, assuming 0 percent effectiveness.

The docket file, which includes the regulatory impact analysis, is available for public inspection 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 docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Additionally, the Economic Analysis prepared for this rule is also available for public inspection at the same location and on HUD's Web site at <http://www.hud.gov>.

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 concerned with those entities that are responsible for making eligibility determinations and conducting income reexaminations or recertifications under sections 3 and 5 of the United States Housing Act of 1937 and tenant-based and project-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the final rule strengthens HUD's internal controls, refines regulations where unclear, and requires the use of HUD's EIV system to verify the employment and income of existing participants. The U.S. Housing Act of 1937 defines a small PHA as a PHA that administers 250 or fewer public housing units and irrespective of the number of vouchers that the PHA administers. HUD uses this number of units to also measure small multifamily housing developments. With fewer units to administer, there are fewer families for whom income verification is needed. Nonetheless, regardless of the number of units or families to administer, income verification processes are reduced with the use of the EIV system. Public housing and multifamily housing administrators are relieved of the burden of obtaining written verification of employment, wages, unemployment compensation, and Social Security benefits from third-party income sources, which is time consuming. Additionally, PHAs, large and small, are already familiar with and have begun using EIV. The final rule provides an additional 6 months for administrators of multifamily housing developments, large or small, to transition to EIV. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule involves external administrative requirements or procedures that are related to income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. Such requirements or procedures do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Numbers 2577-0220 and 2502-0204. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB Control Number.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) 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 final rule would not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Congressional Review of Final Rules

This rule constitutes a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8). This rule therefore has a 60-day delayed effective date and will be submitted to the Congress in accordance with the requirements of the Congressional Review Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.103, 14.135, 14.149, 14.157, 14.181, 14.195, 14.850, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 92

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

24 CFR Part 908

Computer technology, Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5, 92, and 908 to read 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. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109-115, 119 Stat. 2936.

■ 2. Revise § 5.216 to read as follows:

§ 5.216 Disclosure and verification of Social Security Number (SSN) and Employer Identification Numbers (EIN).

(a) *Disclosure required of assistance applicants.* Each assistance applicant must submit the following information

to the processing entity when the assistance applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the assistance applicant and to each member of the assistance applicant's household; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(b) *Disclosure required of individual owner applicants.* Each individual owner applicant must submit the following information to the processing entity when the individual owner applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to the individual owner applicant and to each member of the individual owner applicant's household who will be obligated to pay the debt evidenced by the mortgage or loan documents; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(c) *Disclosure required of certain officials of entity applicants.* Each officer, director, principal stockholder, or other official of an entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) The complete and accurate SSN assigned to each such individual; and

(2) The documentation referred to in paragraph (f)(1) of this section to verify each SSN.

(d) *Disclosure required of participants.* (1) *Initial disclosure.* Each participant whose initial determination of eligibility under the program involved was begun before March 30, 2009 must submit the following information to the processing entity at the next interim or regularly scheduled reexamination of family composition or income, or other recertification for the program involved:

(i) The complete and accurate SSN assigned to the participant and to each member of the participant's household; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN.

(2) *Subsequent disclosure.* Once a participant has disclosed and the processing entity has verified every SSN, the following rules apply:

(i) When a participant requests to add a new household member, the participant must submit that SSN to the processing entity at the time of the request or at the time of processing the interim reexamination or recertification

of family composition that includes the new member(s):

(A) The complete and accurate SSN assigned to each new member; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN for each new member.

(ii) If the participant or any member of the participant's household has a previously undisclosed SSN, or has been assigned a new SSN, the participant must submit the following to the processing entity at the next interim or regularly scheduled reexamination of family composition or income, or other recertification:

(A) The complete and accurate SSN assigned to the participant or household member involved; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such individual.

(iii) Additional SSN disclosure and verification requirements, including the nature of the disclosure, the verification required, and the time and manner for making the disclosure and verification, may be specified in administrative instructions by:

(A) HUD; and

(B) In the case of the public housing program or the programs under 24 CFR parts 882 and 982, the PHA.

(e) *Disclosure required of entity applicants.* Each entity applicant must submit the following information to the processing entity when the entity applicant's eligibility under the program involved is being determined:

(1) Any complete and accurate EIN assigned to the entity applicant; and

(2) The documentation referred to in paragraph (f)(2) of this section to verify the EIN.

(f) *Required documentation.* (1) *Social Security Numbers.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (d) of this section is a valid SSN card issued by the Social Security Administration (SSA), or such other evidence of the SSN as HUD may prescribe in administrative instructions.

(2) *Employer Identification Numbers.* The documentation necessary to verify any EIN of an entity applicant that is required to disclose its EIN under paragraph (e) of this section is the official, written communication from the IRS assigning the EIN to the entity applicant, or such other evidence of the EIN as HUD may prescribe in administrative instructions.

(g) *Effect on assistance applicants.* (1) Except as provided in paragraph (g)(2) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a

program, the assistance applicant may retain its place on the waiting list for the program, but cannot become a participant until it can provide:

(i) The complete and accurate SSN assigned to each member of the household; and

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSN of each such member.

(2) For applicants receiving assistance pursuant to the section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under subpart H of part 882 of this title, the documentation in paragraph (g)(1) of this section must be provided to the processing entity within 90 days from the date of admission into the program, except that the processing entity may, at its discretion, extend this period for an additional 90 days.

(h) *Rejection of documentation.* The processing entity may reject documentation referred to in paragraph (f) of this section only for such reasons as HUD may prescribe in applicable administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by visiting the *IRS.gov* Web site or calling the IRS toll-free Business and Specialty Tax Line at 800-829-4933.

(2) Information regarding EINs may be obtained by contacting the local office of the IRS or consulting the appropriate IRS publications.

■ 3. Amend § 5.218 by revising paragraph (a), the introductory text of paragraph (b), and paragraph (c) to read as follows:

§ 5.218 Penalties for failing to disclose and verify Social Security and Employer Identification Numbers.

(a) *Denial of eligibility of assistance applicants and individual owner applicants.* The processing entity must deny the eligibility of an assistance applicant or individual owner applicant in accordance with the provisions governing the program involved, if the assistance or individual owner applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in § 5.216.

(b) *Denial of eligibility of entity applicants.* The processing entity must deny the eligibility of an entity applicant in accordance with the provisions governing the program involved; if:

* * * * *

(c) *Termination of assistance or termination of tenancy of participants.* The processing entity must terminate the assistance or terminate the tenancy,

or both, of a participant, in accordance with the provisions governing the program involved, if the participant does not meet the applicable SSN disclosure, documentation, and verification requirements specified in § 5.216.

* * * * *

■ 4. Add a new § 5.233 to read as follows:

§ 5.233 Mandated use of HUD's Enterprise Income Verification (EIV) System.

(a) *Programs subject to this section and requirements.* (1) The requirements of this section apply to entities administering assistance under:

- (i) Public housing;
- (ii) Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;
- (iii) Moderate Rehabilitation under 24 CFR part 882;
- (iv) Project-based voucher program under 24 CFR part 983;
- (v) Project-based Section 8 programs under 24 CFR parts 880, 883, 884, 886, and 891;

(vi) Section 202 of the National Housing Act of 1959 (12 U.S.C. 1701q);

(vii) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(viii) Sections 221(d)(3) and 236 of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715z-1); and

(ix) Rent Supplement program under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(2) Processing entities must use HUD's EIV system as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income, in accordance with § 5.236.

(b) *Penalties for noncompliance.* Failure to use the EIV system may result in the imposition of remedial actions as outlined in 24 CFR 84.62, except as provided in paragraph (b) of this section. For multifamily owners and management agents, failure to use the EIV system may result in the imposition of sanctions and/or the assessment of disallowed costs associated with any resulting incorrect subsidy or tenant rent calculations, or both.

(c) *Implementation Date for Multifamily Owners and Management Agents.* For entities administering assistance under paragraphs (a)(1)(v) through (a)(1)(ix) of this section, use of the EIV system is required commencing on September 30, 2009.

■ 5. Amend § 5.508 by revising paragraphs (b)(1), and (b)(2) to read as follows:

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

* * * * *

(b) * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity must obtain verification of the declaration by requiring presentation of a U.S. passport, U.S. birth certificate, Employment Authorization card, Temporary Resident card, or other appropriate documentation, as provided by section 214.

(2) For noncitizens, adequate evidence consists of:

- (i) A signed declaration of eligible immigration status; and
- (ii) One of the Section 214 documents listed in § 5.508(b)(1) and referred to in § 5.510.

* * * * *

■ 6. Amend § 5.516 by revising paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* In accordance with § 5.518, temporary deferral of termination of assistance may be available to families receiving assistance under a section 214-covered program on June 19, 1995, and who either include a refugee under section 207 of the Immigration and Nationality Act, or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

■ 7. Amend § 5.518 by revising paragraph (b), removing paragraph (c), and redesignating existing paragraph (d) as paragraph (c) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

* * * * *

(b) *Temporary deferral of termination of assistance.* (1) *Eligibility of temporary deferral of termination of assistance:* If a family was receiving assistance under a section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other

affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term "affordable housing" refers to housing that is not substandard; that is of appropriate size for the family; and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Housing-covered programs: Conditions for granting temporary deferral of termination of assistance.* The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing-covered program and the family was receiving assistance under a Section 214-covered program on June 19, 1995, and the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of the Immigration and Nationality Act.

* * * * *

■ 8. Amend § 5.609 as follows:

- a. Revise paragraph (a);
- b. Remove existing paragraph (d);
- c. Redesignate existing paragraphs (b) and (c) as paragraphs (d) and (e), respectively;
- d. In newly designated paragraph (d)(3), revise the reference to "paragraph (b)(2) of this section" to read "paragraph (d)(2) of this section";
- e. In newly designated paragraph (d)(4), revise the parenthetical reading "(except as provided in paragraph (c)(14) of this section)" to read "(except as provided in paragraph (e)(14) of this section)";
- f. In newly designated paragraph (d)(5) revise the reference to "paragraph (c)(3) of this section" to read "paragraph (e)(3) of this section";
- g. In newly designated paragraph (d)(6)(B), revise the reference to "paragraph (c) of this section" to read "paragraph (e) of this section";
- h. In newly designated paragraph (d)(8), revise the reference to "paragraph (c)(7) of this section" to read "paragraph (e)(7) of this section";
- i. In newly designated paragraph (e)(6), revise the reference to "paragraph (b)(9) of this section" to read "paragraph (d)(9) of this section";
- j. In newly designated paragraph (e)(17), revise the reference to "24 CFR 5.609(c)" to read "24 CFR 5.609(e)"; and
- k. Add new paragraphs (b) and (c) to read as follows:

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; and

(2) Are based on, at the time of admission, reexamination, or recertification:

(i) Actual income being received (projected forward for a 12-month period); or

(ii) Past actual income received or earned within the last 12 months of the determination date, as HUD may prescribe in applicable administrative instructions when:

(A) The family reports little or no income; and

(B) The processing entity is unable to determine annual income due to fluctuations in income (e.g., seasonal or cyclical income);

(3) Which are not specifically excluded in paragraph (e) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) *Historical amounts.* If the processing entity is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the processing entity may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. The processing entity may also request the family to provide documentation of current income. If the family can provide acceptable documentation dated either within the 60-day period preceding the determination date or the 60-day period following the request date, the processing entity may use this documentation to determine annual income.

(c) *Rejection of documentation.* The processing entity may reject any income documentation for such reason as HUD may prescribe in applicable administrative instructions.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

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

■ 10. Revise § 92.203(d)(1) to read as follows:

§ 92.203 Income determination.

* * * * *

(d)(1) The participating jurisdiction must calculate the annual income of the family based on the actual income being received at the time the participating jurisdiction determines the family is income eligible, projected forward for the 12-month period. If the participating jurisdiction is unable to determine annual income using current information because the family reports little to no income or because income fluctuates, the participating jurisdiction may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. The participating jurisdiction may also request the family to provide documentation of the current income, and if the family can provide acceptable documentation dated either within the 60-day period preceding the determination date or the 60-day period following the request date, the processing entity may use this documentation to determine annual income. Annual income shall include income from all family members. Income or asset enhancement from the

HOME-assisted project shall not be considered in calculating annual income.

* * * * *

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

■ 11. The authority citation for part 908 continues to read as follows:

Authority: 42 U.S.C. 1437f, 3535d, 3543, 3544, and 3608a.

■ 12. Revise § 908.101 to read as follows:

§ 908.101 Purpose.

The purpose of this part is to require Public Housing Agencies (PHAs) that operate public housing, Indian housing, or section 8 Rental Certificate, Housing Choice Voucher (HCV), Rental Voucher, and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. These electronically submitted data are required for HUD forms HUD–50058, Family Report; and HUD–50058–FSS, Family Self-Sufficiency Addendum. Applicable program entities must retain form HUD–50058 during the term of each assisted lease, and for at least 3 years thereafter, to support billings to HUD and to permit an effective audit. Electronic retention of form HUD–50058 fulfills the retention requirement under this section.

Dated: January 13, 2009.

Roy A. Bernardi,
Deputy Secretary.

[FR Doc. E9–1248 Filed 1–26–09; 8:45 am]

BILLING CODE 4210–67–P