

the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

### Signing Authority

The amendments contained in this document are being issued by CBP in accordance with § 0.1(a)(1) of title 19 of the CFR (19 CFR 0.1(a)(1)), pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

### List of Subjects

#### 19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

#### 19 CFR Part 191

Administrative practice and procedure, Bonds, Claims, Commerce, Customs duties and inspection, Drawback, Exports, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

For the reasons set forth in the preamble, CBP and the Treasury Department propose to amend 19 CFR parts 113 and 191 as set forth below:

#### PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1623, 1624.

2. Section 113.62 is amended by redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m) to read as follows:

#### § 113.62 Basic importation and entry bond conditions.

(m) *Agreement to comply with CBP regulations applicable to substitution drawback claims.* In the case of imported merchandise that is subject to internal revenue tax imposed under the Internal Revenue Code of 1986, as amended (IRC), the principal agrees not to file, or to transfer to a successor the right to file, a substitution drawback claim involving such tax if the substituted merchandise has been, or will be, the subject of a removal from bonded premises without payment of tax, or the subject of a claim for refund or drawback of tax, under any provision of the IRC.

\* \* \* \* \*

#### PART 191—DRAWBACK

3. The general authority citation for part 191 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

\* \* \* \* \*

4. Section 191.32 is amended:
- At the end of paragraph (b)(2), by removing the word “and”;
  - At the end of paragraph (b)(3), by removing the period and adding, in its place, “; and”;
  - By adding a new paragraph (b)(4) to read as follows:

#### § 191.32 Substitution drawback.

\* \* \* \* \*

(b) \* \* \*

(4) For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substitute merchandise.

\* \* \* \* \*

Approved: October 8, 2009.

**Jayson P. Ahern,**

*Acting Commissioner, U.S. Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### 24 CFR Parts 5 and 908

[Docket No. FR-5351-P-01]

RIN 2501-AD48

#### Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of Enterprise Income Verification

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

**ACTION:** Proposed rule.

**SUMMARY:** On January 27, 2009, HUD issued a final rule that revised the regulations for HUD’s public and assisted housing programs to require the use of HUD’s Enterprise Income Verification system by public housing agencies and multifamily housing owners and management agents when verifying the employment and income of program participants. Consistent with Administration policy to review rules issued during the transition from one Administration to another, HUD re-opened the January 27, 2009, final rule

for public comment, and specifically solicited public comment on extending the effective date of the rule. While HUD remains committed to full implementation of the Enterprise Income Verification system, the public comments submitted on the January 27, 2009, final rule highlighted for HUD certain regulatory provisions that require further clarification, and ones that were extraneous to the purpose of the rule, which is full implementation of the Enterprise Income Verification system.

By final rule published on August 28, 2009, HUD delayed the effective date of the January 27, 2009, final rule to January 31, 2010. During this period before the final rule takes effect, HUD submits for public comment, through this proposed rule, regulatory revisions designed to make certain provisions in the January 27, 2009, final rule more clear, and return other regulatory provisions to their pre-January 2009 final rule content.

**DATES:** *Comment Due Date:* November 16, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For Office of Public and Indian Housing programs, contact Nicole Faison, Program Advisor for the Office of Public Housing and Voucher Programs, Department of Housing and Urban Development, 451 7th Street, SW., Room 4214, Washington, DC 20410, telephone number 202-402-4267. For Office of Housing Programs, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 7th 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**

On January 27, 2009 (74 FR 4832), HUD published a final rule, entitled "Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs" (Final Rule). The Final Rule revised HUD's public and assisted housing program regulations to implement the upfront income verification process for program participants and to require the use of HUD's Enterprise Income Verification (EIV) system by public housing agencies (PHAs) and owners and management agents. The Final Rule followed publication of a June 19, 2007 (72 FR 33844) proposed rule, and took into consideration the public comments

received on the June 2007 proposed rule.

The Final Rule was originally scheduled to become effective on March 30, 2009. On February 11, 2009 (74 FR 6839), HUD published a notice in the **Federal Register** seeking public comment on whether to delay the effective date of the Final Rule. The February 11, 2009, notice was issued in accordance with the memorandum of January 20, 2009, from the assistant to the President and Chief of Staff, entitled "Regulatory Review" and subsequently published in the **Federal Register** on January 26, 2009 (74 FR 4435). The notice explained that HUD was considering a temporary 60-day delay in the effective date to allow the Department an opportunity for further review and consideration of new regulations, consistent with the Chief of Staff memorandum. In addition to soliciting comments specifically delaying the effective date, the February 11, 2009, notice also requested comment generally on the Final Rule.

The comment period on the February 11, 2009, notice closed on March 13, 2009. HUD received 50 public comments. Comments were submitted by a variety of organizations including PHAs, property owners, management agents, legal aid organizations, community development organizations, and public interest organizations. The majority of comments were supportive of a delayed effective date. The commenters not only supported a delay but sought clarification or changes by HUD of certain aspects of the Final Rule, about which questions and comments were raised. Among other issues, commenters requested that HUD address the need to revise the definition of "annual income," and clarify the verification procedures applicable to noncitizens and participants who may experience difficulty obtaining social security numbers for their children.

Following publication of the February 11, 2009, **Federal Register** notice, HUD issued a final rule on March 27, 2009 (74 FR 13339), that extended the effective date of the Final Rule to September 30, 2009. The purpose of this extension was to provide HUD with time to review the public comments received in response to the February 11, 2009, notice. On August 28, 2009 (74 FR 44285), HUD published a final rule that further extended the effective date of the Final Rule to January 31, 2010. The further extension was undertaken to allow the two HUD Assistant Secretaries, who have responsibility for the programs affected by the rule, and only recently confirmed, sufficient time to review the subject matter of the Final

Rule, and to review and consider the public comments received on HUD's February 11, 2009, **Federal Register** notice.

##### **II. This Proposed Rule**

As noted in the Summary to this proposed rule, the Department remains committed to the full and effective implementation of the EIV system. The use of upfront income verification will help identify and cure inaccuracies in public and assisted housing subsidy determinations, which benefits public and assisted housing providers, tenants, and taxpayers. Following a thorough review of the subject matter of the Final Rule and the issues raised by the comments on the February 11, 2009, notice, HUD is proposing, through this rule, to make certain changes to the Final Rule, which HUD believes will address the issues and concerns raised by the public commenters, and defer other issues, to subsequent rulemaking.

To provide stakeholders, residents, and other interested members of the public with the opportunity to offer feedback on the proposed regulatory changes, HUD is undertaking additional rulemaking and soliciting comments on the proposed amendments for a period of 30 days. The regulatory changes proposed by this rule are few and focused, and HUD believes that, in light of the prior public comment on the Final Rule, a 30-day period presents sufficient time to review and comment on the changes.

HUD welcomes public comment on all aspects of the proposed rule; however given the privacy concerns surrounding the disclosure of social security numbers (SSNs), the Department specifically requests comments on those proposed regulatory requirements pertaining to SSN disclosure. All public comments will be considered by HUD in the development of a final rule that will, depending upon public comments received in response to this proposed rule, and further consideration of issues by HUD, supersede provisions of the Final Rule that would otherwise take effect on January 31, 2010.

The following presents a summary of the key changes made to the Final Rule, and these changes are directed to: deferring changes to the definition of annual income to separate rulemaking that may address broader rent and income reforms; deferring any changes to HUD's noncitizen regulations, which, given the importance of this issue, should be addressed by separate rulemaking; and simplifying SSN disclosure and verification processes, to the extent feasible, and consistent with

maintaining confidentiality of these processes.

*A. Proposed Amendments to 24 CFR Part 5, Subpart B—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information*

1. *Applicability of the Social Security Number disclosure requirements.* HUD's regulations at 24 CFR 5.216 establish requirements regarding SSN disclosure and verification. This proposed rule would clarify that the SSN disclosure requirements apply to applicants and participants in HUD's public and assisted housing programs subject to the requirements of 24 CFR part 5, subpart B; however, the disclosure requirements are inapplicable to individuals who do not contend eligible immigration status under HUD's noncitizens regulations at 24 CFR part 5, subpart E. The disclosure requirements for such individuals continue to be found at 24 CFR 5.508 of the noncitizens regulations. As noted above in this preamble, the Final Rule was not directed to addressing the noncitizens requirements. Given the significance of the issues involved, HUD believes that any changes deemed necessary to the noncitizens requirements would more appropriately be the subject of a separate rulemaking.

2. *Participant SSN disclosure requirements—"grandfathering" of participants 62 years of age or older and exemption for individuals who have already disclosed a valid SSN.* This proposed rule would also streamline the SSN disclosure requirements for current participants in HUD rental assistance programs. Specifically, the proposed rule would exempt current participants 62 years of age or older as of January 31, 2010, from having to disclose an SSN. The Department is sympathetic to the burden that such a disclosure requirement might impose on elderly residents, many of whom have been residing in their units for many years and are otherwise in compliance with all program requirements. The proposed rule would also reduce administrative burden by exempting those participants who have previously disclosed a valid SSN from having to re-provide their SSN for duplicative verification. Under proposed § 5.216(e)(1), only those individuals who have not previously disclosed a valid SSN or who have been issued a new SSN would be subject to the SSN disclosure and verification procedures. The proposed changes would reduce administrative burden, and enhance privacy protections for individuals and households who have already disclosed valid SSNs, as well as

reduce the administrative burden for the covered housing providers that must collect this information.

3. *Required documentation.* Proposed § 5.216(g)(1) would permit compliance with the SSN disclosure requirements through submission of a valid SSN card issued by the Social Security Administration or an original document issued by a federal or state government agency that provides the SSN of the individual along with other identifying information. In addition, the proposed rule provides for HUD to prescribe other acceptable evidence of a SSN through administrative instructions. The public comments received in response to the February 2009, notice noted the possible unforeseen circumstances that might delay issuance of a SSN card, even where the individual has a valid SSN number. The proposed changes would address such concerns and reduce administrative burden by authorizing reliance on the SSN documentation provided by another government agency. However, HUD notes that such SSN data provided by participants would still be subject to verification by PHAs and owners and management agents through use of the EIV system.

4. *Addition of new household members under the age of six.* The proposed rule would also revise and clarify the applicability of the SSN disclosure requirements for households adding new household members under the age of six. Public comments on the February 2009, notice made HUD cognizant that there may be unforeseen circumstances outside the control of a household that may delay the issuance of a SSN for such children under the age of six. To address these concerns, proposed § 5.216(e)(2)(ii) would provide participants with 90 days to provide a SSN for new household members under the age of six. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to provide documentation of a SSN for the child under six was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the child is entitled to all the benefits of being a member of the household. Failure of the participant to provide documentation of a SSN for the child under six by the deadline, will result in applicable penalties as described in § 5.218.

5. *Disclosure requirements upon assignment of new SSN.* The proposed rule would provide processing entities

with additional flexibility to determine the timing of disclosure of a newly assigned SSN, by providing that if a participant has been assigned a new SSN, the participant must disclose the SSN at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity. Under the regulations currently in effect the participant is not required to disclose a newly assigned SSN until a reexamination or recertification of family composition and income.

6. *Exception to required termination of assistance or tenancy due to unforeseen circumstances.* Under the current regulations in effect, a processing entity must terminate the assistance or tenancy, or both, of a participant who does not meet the SSN disclosure requirements (see § 5.218(c)). As noted above in this preamble, HUD is aware that unforeseen circumstances may sometimes delay the issuance of a SSN. Accordingly, the proposed rule would revise § 5.218(c) to allow the processing entity to defer termination and provide the participant with an additional 90 days to disclose a valid SSN, but only if the processing entity determines that: (1) failure to comply with the SSN requirements was due to circumstances that could not have reasonably been foreseen and were outside the control of the household; and (2) there is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline. Failure of the participant to disclose a SSN by the deadline will result in termination.

7. *Required use of EIV—no deferred implementation date for multifamily owners and management agents.* Consistent with the Final Rule, this proposed rule would continue the required use of the EIV system by PHAs and multifamily owners and management agents (see § 5.233 of the Final Rule). However, the proposed rule would no longer provide for deferred EIV implementation for owners and management agents. Although PHAs have long had experience with EIV, the system was relatively new for owners and management agents at the time the Final Rule was originally published. Accordingly, HUD provided multifamily owners and management agents with an additional six months from the rule's effective date to comply with EIV use. The deferral was intended to provide owners and management agents with the necessary time to become familiar with the EIV system. Given the extension of time for implementation

that is now provided by extending the effective date of the use of EIV to January 31, 2010, HUD determined that a deferral is no longer necessary.

8. *Required use of EIV in its entirety.* Several commenters on the February 11, 2009, notice questioned whether the use of the EIV system was required only for income verification or in its entirety. As previously noted, HUD is committed to the full and effective implementation of the EIV system, and continues to believe that the use of upfront income verification will help identify and cure inaccuracies in public and assisted housing subsidy determinations, which benefits public and assisted housing providers, tenants, and taxpayers. In response to the comments, this proposed rule would clarify that processing entities must use the EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income and also to reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

9. *Technical and conforming amendments.* The proposed rule would also make several technical, non-substantive changes, to the regulations at 24 CFR part 5, subpart B. These changes include updating cross-references to other regulatory provisions that would be revised by the proposed rule, and removing outdated references to HUD programs no longer in existence (for example, the obsolete reference to the Section 215 program at § 5.216(b)(3)(i)(A)). HUD believes that these changes, although technical and conforming in nature, will help eliminate confusion, and contribute to clarity.

#### *B. Withdrawal of Amendments to 24 CFR Part 5, Subpart E—Restrictions on Assistance to Noncitizens*

The Final Rule would have made several revisions to the documentation requirements in HUD's noncitizens regulations, primarily to conform to the other amendments pertaining to use of the EIV system. As noted elsewhere in this preamble, the intent of the Final Rule was not directed to revising or updating the noncitizens requirements. Many of the comments submitted in response to the February 11, 2009, notice requested clarification regarding the verification procedures applicable to noncitizens and posed questions concerning the intent of the regulatory changes contained in the Final Rule. Given the sensitivity and significance of the issues involved, HUD has decided that should any future changes to the

noncitizens requirements be deemed necessary, they would more appropriately be the subject of a separate rulemaking focused exclusively on these policies and procedures and providing the public with additional opportunity to comment. Accordingly, through this rule, HUD proposes to withdraw the January 27, 2009, amendments to the noncitizens regulations, and leaves in place the requirements codified in 24 CFR part 5, subpart E, prior to revision by the Final Rule.

#### *C. Withdrawal of Amendments to 24 CFR Part 5, Subpart F (Family Income and Payment Requirements) and 24 CFR Part 92 (HOME Investment Partnerships Program)*

The Final Rule would have revised the definition of annual income for HUD's public and assisted housing programs codified at § 5.609. Specifically, the Final Rule would have added new provisions regarding the use of historical income amounts for purposes of determining annual income, and made other technical changes to the determination of annual income. The Final Rule would also have made a conforming change to the annual income provisions of the HOME Investment Partnership program at 24 CFR 92.203.

Many of the comments on HUD's February 11, 2009, notice questioned the annual income provisions of the Final Rule, and requested additional clarification and revisions. Given the comments received on the issue expressing uncertainty about the changes to annual income in the Final Rule, the possibility of legislation that would make, within the near future, statutory changes to annual income provisions, and the fact that such changes are not necessary to implementation of the EIV system, the Department has decided to maintain the definition of annual income currently in effect; that is, this proposed rule leaves the content of § 5.609 as it was prior to amendment by the January 27, 2009, final rule. Should HUD determine that additional rulemaking on the subject of annual income is necessary or appropriate, HUD will provide the public with the opportunity to comment on any proposed changes to the regulations.

### **III. Findings and Certifications**

#### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled

"Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order).

The January 27, 2009, final rule was determined an economically significant rule based on full implementation of EIV, which the January 27, 2009, final rule would achieve by mandating its use by all HUD housing providers. The rulemaking initiated by this proposed rule does not propose to alter full use of EIV. As stated earlier in this preamble, HUD is committed to full implementation of EIV. This proposed rule is limited to address certain regulatory amendments in the January 27, 2009, final rule that caused confusion and which amendments were not central or necessary to full implementation of EIV. The clarifications made by this rule do not result in an impact on the economy of \$100 million or more.

The docket file 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) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339.

#### *Paperwork Reduction Act*

The information collection requirements in this proposed 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.

#### *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. Implementation of HUD's EIV system, which the Refinement of Income and Rent Determination rulemaking addresses is concerned with those entities that are responsible for making eligibility determinations and 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. The purpose of this proposed rule is not to interfere with full implementation of HUD's EIV system, now scheduled to take effect on January 31, 2010, but is limited to clarifying certain regulatory amendments of the January 27, 2009, final rule that required further clarification, and proposing to remove other regulatory amendments that were determined not necessary for implementation of EIV. Accordingly, this proposed rule does not alter the small entity impact analysis made in the January 27, 2009, final rule nor does this proposed rule, which makes certain clarifying amendments, result in a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

#### *Environmental Impact*

This proposed rule involves statutorily required and/or discretionary establishment and review of interest rates, loan limits, building cost estimates, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

#### *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 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 proposed rule would not impose any Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

#### **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 908*

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

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5 and 908, as amended in the final rule published on January 27, 2009, at 74 FR 4832, 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 and Employer Identification Numbers.**

(a) *General.* The requirements of this section apply to applicants and participants as described in this section, except this section is inapplicable to individuals who do not contend eligible immigration status under subpart E of this part (see § 5.508).

(b) *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 (g)(1) of this section to verify each such SSN.

(c) *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 (g)(1) of this section to verify each such SSN.

(d) *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 (g)(1) of this section to verify each SSN.

(e) *Disclosure required of participants.*

(1) *Initial disclosure.* (i) Each participant, except those age 62 or older as of January 31, 2010, whose initial determination of eligibility under the program involved was begun before January 31, 2010, must submit the information described in paragraph (e)(1)(ii) of this section, if the participant has:

(A) Not previously disclosed a SSN;

(B) Previously disclosed a SSN that HUD or the SSA determined was invalid; or

(C) Been issued a new SSN.

(ii) Each participant subject to the disclosure requirements under paragraph (e)(1)(i) of this section must submit the following information to the processing entity at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification for the program involved:

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

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

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

(i) *Addition of new household who is at least six years of age.* When the participant requests to add a new household member who is at least six years of age, the participant must provide the following 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 (g)(1) of this section to verify the SSN for each new member.

(ii) *Addition of household member who is under the age of six.* (A) When a participant seeks to include or add a household member who is under the age of six and who has no SSN, the participant shall be required to provide the complete and accurate SSN assigned to each new child and the documentation referred to in paragraph (g)(1) of this section to verify the SSN for each new child within 90 calendar days of the child being added to the household.

(B) The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the participant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant. During the period that the processing entity is awaiting documentation of a SSN, the processing entity shall include the child as part of the assisted household and the child shall be entitled to all the benefits of being a household member. If upon expiration of the provided time period, the participant fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.

(iii) *Assignment of new SSN.* If the participant or any member of the participant's household has been assigned a new SSN, the participant must submit the following to the processing entity at either the time of receipt of the new SSN; at the next interim or regularly scheduled reexamination or recertification of family composition or income, or other reexamination or recertification; or at such earlier time specified by the processing entity:

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

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

(f) *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 (g)(2) of this section to verify the EIN.

(g) *Required documentation.* (1) *SSN.* The documentation necessary to verify the SSN of an individual who is required to disclose his or her SSN under paragraphs (a) through (e) of this section is:

(i) A valid SSN card issued by the SSA;

(ii) An original document issued by a federal or state government agency, which contains the name of the individual and the SSN of the individual, along with other identifying information of the individual; or

(iii) Such other evidence of the SSN as HUD may prescribe in administrative instructions.

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

(h) *Effect on assistance applicants.* (1) Except as provided in paragraph (h)(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 (g)(1) of this section to verify the SSN of each such member.

(2) For applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals under 24 CFR part 882, subpart H, the documentation required in paragraph (h)(1) of this section must be provided to the processing entity within 90 days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity, in its discretion, determines that the applicant's failure to comply was due to circumstances that could not have reasonably been foreseen and were outside the control of the applicant. If upon expiration of the provided time period, the individual fails to produce a SSN, the processing entity shall follow the provisions of § 5.218.

(i) *Rejection of documentation.* The processing entity must not reject documentation referred to in paragraph (g) of this section, except as HUD may otherwise prescribe through publicly issued notice.

3. Amend § 5.218 by revising paragraphs (a), (b) and (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:

(1) The entity applicant does not meet the EIN disclosure, documentation, and verification requirements specified in § 5.216; or

(2) Any of the officials of the entity applicant referred to in § 5.216(d) does not meet the applicable SSN disclosure, and documentation and verification requirements specified in § 5.216.

(c) *Termination of assistance or termination of tenancy of participants.* (1) 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.

(2) The processing entity may defer termination and provide the participant with an additional 90 days to disclose a SSN, but only if unless the processing entity, in its discretion, determines that:

(i) The failure to meet these requirements was due to circumstances that could not have reasonably been foreseen and were outside the control of the participant; and

(ii) There is a reasonable likelihood that the participant will be able to disclose a SSN by the deadline.

(3) Failure of the participant to disclose a SSN by the deadline specified in paragraph (c)(2) of this section will result in termination of the assistance or tenancy, or both, of the participant.

\* \* \* \* \*  
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 the:

(i) Public Housing program under 24 CFR part 960;

(ii) Section 8 Housing Choice Voucher (HCV) program under 24 CFR part 982;

(iii) Moderate Rehabilitation program 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, 881, 883, 884, 886, and 891;

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

(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. 1715(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 in its entirety:

(i) 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 and administrative guidance issued by HUD; and

(ii) To reduce administrative and subsidy payment errors in accordance with HUD administrative guidance.

(b) *Penalties for noncompliance.* Failure to use the EIV system in its entirety 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.

**§ 5.236 [Amended]**

5. In § 5.236(b)(3)(i)(A), remove "215".

**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**

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

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

7. Revise § 908.101 to read as follows:

**§ 908.101 Purpose.**

The purpose of this part is to require Public Housing Agencies (PHAs), including Moving to Work (MTW) 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, including the Family Self-Sufficiency (FSS) Addendum. Applicable program entities must retain at a minimum, the last three years of the form HUD-50058, and supporting documentation, during the term of each assisted lease, and for a period of at least 3 years from the end of participation (EOP) date, to support billings to HUD and to permit an effective audit. Electronic retention of form HUD-50058 and HUD-50058-FSS and supporting documentation fulfills the retention requirement under this section.

Dated: September 23, 2009.

**Shaun Donovan,**

*Secretary.*

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**BILLING CODE 4210-67-P**

**DEPARTMENT OF THE TREASURY**

**Alcohol and Tobacco Tax and Trade Bureau**

**27 CFR Parts 28 and 44**

[Docket No. TTB-2009-0005; Notice No. 100]

RIN 1513-AB77

**Drawback of Internal Revenue Taxes**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to amend its regulations to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and drawback of tax under the Tariff Act of 1930. The proposal provides conforming amendments to reflect proposed Customs and Border Protection regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations.

**DATES:** We must receive your written comments on or before December 14, 2009.

**ADDRESSES:** You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for this notice on the Federal e-rulemaking portal, Regulations.gov, to submit comments via the Internet;

- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044-4412.

- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200-E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and the comments we receive about this proposal within Docket No. TTB-2009-0005 at <http://www.regulations.gov>. A direct link to this docket is posted on the TTB Web site at [http://www.ttb.gov/regulations\\_laws/all\\_rulemaking.shtml](http://www.ttb.gov/regulations_laws/all_rulemaking.shtml) under Notice No. 100. You also may view copies of this notice, all supporting materials, and the comments we receive about this proposal by