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AUTHORITY: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2396; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

SOURCE: 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

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Subpart A—Generally Applicable Definitions and Requirements; Waivers

AUTHORITY: 29 U.S.C. 794, 42 U.S.C. 1437a, 1437c, 1437c–1(d), 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936; 42 U.S.C. 3600–3620; 42 U.S.C. 5304(b); 42 U.S.C. 12101 *et seq.*; 42 U.S.C. 12704–12708; E.O. 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

§ 5.100 Definitions.

The following definitions apply to this part and also in other regulations, as noted:

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

ALJ means an administrative law judge appointed to HUD pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Broadband infrastructure means cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets the definition of “advanced telecommunications capability” determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).

Covered person, for purposes of 24 CFR 5, subpart I, and parts 966 and 982, means a tenant, any member of the tenant’s household, a guest or another person under the tenant’s control.

Department means the Department of Housing and Urban Development.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Elderly Person means an individual who is at least 62 years of age.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 *et seq.*).

Fair Market Rent (FMR) means the rent that would be required to be paid in the particular housing market area in order to obtain privately owned, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. This Fair Market Rent includes utilities (except telephone). Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the FEDERAL REGISTER in accordance with part 888 of this title.

Family has the meaning provided this term in § 5.403, and applies to all HUD programs unless otherwise provided in the regulations for a specific HUD program.

Federally assisted housing (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

- (1) Public housing;
- (2) Housing receiving project-based or tenant-based assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f);
- (3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);
- (4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;
- (5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);
- (6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715l(d)(5));
- (7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1); or
- (8) Housing assisted by the Rural Development Administration under sec-

tion 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

Gender identity means the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person's perceived gender identity. Perceived gender identity means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

General Counsel means the General Counsel of HUD.

Grantee means the person or legal entity to which a grant is awarded and that is accountable for the use of the funds provided.

Guest, only for purposes of 24 CFR part 5, subparts A and I, and parts 882, 960, 966, and 982, means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. The requirements of parts 966 and 982 apply to a guest as so defined.

Homeownership counseling means housing counseling related to homeownership and residential mortgage loans when provided in connection with HUD's Housing Counseling Program, or required by or provided in connection with HUD Programs as defined in § 5.111. Homeownership counseling is housing counseling that covers the decision to purchase a home, the selection and purchase of a home, issues arising during or affecting the period of ownership of a home (including financing, refinancing, default, and foreclosure, and other financial decisions) and the sale or other disposition of a home.

Household, for purposes of 24 CFR part 5, subpart I, and parts, 960, 966, 882, and 982, means the family and PHA-approved live-in aide.

Housing counseling is independent, expert advice customized to the need of the consumer to address the consumer's housing barriers and to help achieve their housing goals and must include the following processes: Intake; financial and housing affordability

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analysis; an action plan, except for reverse mortgage counseling; and a reasonable effort to have follow-up communication with the client when possible. The content and process of housing counseling must meet the standards outlined in 24 CFR part 214. Homeownership counseling and rental counseling are types of housing counseling.

HUD means the same as *Department*.

MSA means a metropolitan statistical area.

NAHA means the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 *et seq.*).

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

NOFA means Notice of Funding Availability.

OMB means the Office of Management and Budget.

Organizational Unit means the jurisdictional area of each Assistant Secretary, and each office head or field administrator reporting directly to the Secretary.

Other person under the tenant's control, for the purposes of the definition of *covered person* and for parts 5, 882, 966, and 982 means that the person, although not staying as a guest (as defined in this section) in the unit, is, or was at the time of the activity in question, on the premises (as *premises* is defined in this section) because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not under the tenant's control.

Premises, for purposes of 24 CFR part 5, subpart I, and parts 960 and 966, means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

Public housing means housing assisted under the 1937 Act, other than under Section 8. "Public housing" includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

Public Housing Agency (PHA) means any State, county, municipality, or

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other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Rental housing counseling means counseling related to the rental of residential property, which may include counseling regarding future homeownership opportunities when provided in connection with HUD's Housing Counseling Program, or required under or provided in connection with HUD Programs as defined in § 5.111. Rental housing counseling may also include the decision to rent, responsibilities of tenancy, affordability of renting and eviction prevention.

Responsible entity means:

(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD;

(2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

Section 8 means section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

Secretary means the Secretary of Housing and Urban Development.

Sexual orientation means one's emotional or physical attraction to the same and/or opposite sex (*e.g.*, homosexuality, heterosexuality, or bisexuality).

Substantial rehabilitation, for the purposes of determining when installation of broadband infrastructure is required as part of substantial rehabilitation of multifamily rental housing, unless otherwise defined by a program, means work that involves:

(1) Significant work on the electrical system of the multifamily rental housing. "Significant work" means complete replacement of the electrical system or other work for which the preconstruction cost estimate is equal to or greater than 75 percent of the cost of replacing the entire electrical system.

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In the case of multifamily rental housing with multiple buildings with more than 4 units, “entire system” refers to the electrical system of the building undergoing rehabilitation; or

(2) Rehabilitation of the multifamily rental housing in which the pre-construction estimated cost of the rehabilitation is equal to or greater than 75 percent of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than 4 units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.

URA means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201–4655).

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000; 66 FR 28791, May 24, 2001; 77 FR 5674, Feb. 3, 2012; 81 FR 64782, Sept. 21, 2016; 81 FR 90657, Dec. 14, 2016; 81 FR 92635, Dec. 20, 2016]

EFFECTIVE DATE NOTE: At 88 FR 9654, Feb. 14, 2023, § 5.100 was amended by adding alphabetically the definitions “Earned income”, “Real property”, and “Unearned income”, effective Jan. 1, 2024. For the convenience of the user, the added text is set forth as follows:

§ 5.100 Definitions.

* * * * *

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

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Real property as used in this part has the same meaning as that provided under the

law of the State in which the property is located.

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Unearned income means any annual income, as calculated under § 5.609, that is not earned income.

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§ 5.105 Other Federal requirements.

The requirements set forth in this section apply to all HUD programs, except as may be otherwise noted in the respective program regulations in title 24 of the CFR, or unless inconsistent with statutes authorizing certain HUD programs:

(a) *Nondiscrimination and equal opportunity.* (1) The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; 24 CFR part 8; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977