

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

[Docket No. FR-4608-F-02]

RIN 2501-AC72

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

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

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

This rule follows publication of a August 21, 2000 proposed rule, and takes into consideration public comments received on the rule.

DATES: Effective Date: February 20, 2001.

FOR FURTHER INFORMATION CONTACT: For the HOME Investment Partnerships Program, contact Mary Kolesar, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2470.

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

For the Housing Opportunities for Persons with AIDS Program, contact David Vos, Office of Community

Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1934.

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

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

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

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

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

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

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

For all of the above telephone numbers, persons with hearing or speech impairments may call 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, the telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD's FY 1999 Appropriations Act, which included the Quality Housing and Work Responsibility Act of 1998 (as title V of the FY 1999 HUD

Appropriations Act) (the entire FY 1999 Appropriations Act, including title V, is Public Law 105-276, approved October 21, 1998, and frequently referred to as the "Public Housing Reform Act") enacted landmark measures in HUD programs, including many of the reforms sought by Secretary Cuomo, such as transforming public housing, creating additional housing assistance vouchers, merging the Section 8 certificate and voucher programs, and enabling more families to obtain FHA mortgages to become homeowners. Since the Public Housing Reform Act became law, HUD has published many rules and notices implementing the important changes in HUD programs required by the Act. While the majority of these changes are applicable to HUD's public housing and Section 8 programs, HUD has been able to extend, administratively at times, the benefits of some of these landmark measures to HUD programs not specifically identified by the statute.

On August 21, 2000 (65 FR 50842), HUD published a proposed rule that proposed to extend the benefits of (1) deducting certain expenses as provided by the Public Housing Reform Act (currently applicable only to public housing and Section 8 housing (tenant-based and project-based)); and (2) disregarding certain increases in earned income as provided by the Public Housing Reform Act (currently applicable only to public housing) to persons with disabilities served by the following HUD programs—HOME Investment Partnerships, Housing Opportunities for Persons with AIDS, Supportive Housing, and Housing Choice Voucher.

HUD proposed these benefit extensions to persons with disabilities because HUD believes that these deductions and the disregard of earned income constitute an important step in helping persons with disabilities find employment and retain employment. HUD is aware that the lack of accessible, affordable housing continues to be a barrier to the ability of persons with disabilities to take advantage of economic opportunities in many communities across the country. The availability of accessible, affordable housing and the location of that housing can be the key to persons with disabilities in obtaining employment. The August 21, 2000 proposed rule provides more detailed information on the two amendments made by the proposed rule (the extension of certain mandatory deductions of expenses, and the disregard of earned income) and HUD refers the reader to the earlier

rulemaking for more detailed information.

II. Discussion of Public Comments on the Proposed Rule

The public comment period for the August 21, 2000, proposed rule closed on October 20, 2000. HUD received 26 comments. The commenters represented a broad cross-section of affected entities. Commenters included a wide spectrum of individuals and entities affected by or interested in this rulemaking. The majority of the commenters expressed support for the rule's proposals. Notwithstanding widespread support of the rule's proposals, commenters raised certain concerns about the rule, primarily with respect to HUD's proposal to expand the earned income disregard. The following presents a discussion of the significant comments and questions raised by the commenters and HUD's responses to these comments and questions.

A. Mandatory Expense Deduction From Gross Income

Comment: This proposal is a positive step in helping persons with disabilities become economically self sufficient. The following comments reflect the types of comments submitted in support of this proposal.

The expense deduction will help people with disabilities to obtain and keep employment.

The expense deduction will increase the opportunity for persons with disabilities to access many HUD programs.

The expense deduction will have a positive effect on persons with disabilities.

The expense deduction creates incentives for residents in HUD-assisted programs to return to the work force by adjusting their rent to reflect increased expenses.

Many poor people must spend a large portion of their income on required services. The rule represents a positive step by ensuring that money spent on care for persons with disabilities and child care expenses is not counted as income.

The more uniform standard of income deductions as proposed by the rule will simplify program administration at the local level.

HUD Response. HUD appreciates the comments in support of the proposal to deduct certain expenses from gross income.

Comment. The rule should allow for the deduction of expenses incurred to prevent institutionalization of a person with disabilities.

HUD Response. The rule provides for deduction of unreimbursed reasonable attendant care expenses. (See § 5.611(a)(3)(ii).)

Comment. Since the intention of the rule is self-sufficiency, the rule should not limit the exclusion of certain expenses only to the extent they exceed three percent of gross income. The rule would better serve families if it allows for a complete exclusion of the listed expenses.

HUD Response. The three percent cap is imposed by statute, and therefore cannot be revised by HUD through regulation. (See 42 U.S.C. 1437a(b)(5).)

Comment. The definition of "adjusted income" in § 5.611 provides the basis for determining the amount of rent to be charged to an eligible household after the initial determination of eligibility is made. As amended by the proposed rule, § 5.611 ensures that adjustments to income for persons with disabilities would be taken into account in determining rent. However, if § 5.609 is not similarly amended, some persons with disabilities whose gross incomes slightly exceed the program limits, but who would be eligible for substantial deductions for expenses of care, would be excluded from program eligibility.

HUD Response. The statutory provision for these deductions relates to adjusted income, not income for eligibility purposes. There is no indication of Congressional intent to adjust eligibility limits, which most applicants are considerably below in any event, for such purposes.

B. Mandatory Earned Income Disregard

Comment: This proposal is a positive step in helping persons with disabilities become economically self sufficient. The following comments reflect the types of comments submitted in support of this proposal.

Persons with disabilities often have difficulty transitioning to employment. The earned income disregard will support these families in their quest for independence, and ease the transition to self-sufficiency.

The earned income disregard concept has worked well in conjunction with the Temporary Assistance for Needy Families (TANF) program. It should be equally valuable in helping persons with disabilities residing in HUD-assisted housing move toward self-sufficiency.

Counting all income from earnings is tantamount to removing any incentive to work and be a contributing citizen when it would result in the loss or significant reduction in housing assistance benefits.

The more residents who work, the greater the income to HUD and those involved in operating HUD assisted housing.

The earned income disregard helps qualified families negotiate the transition from public assistance to employment. Any negative budget impacts caused by the disregard will be short-term in nature and will be offset by increased rental income (or lower subsidy levels) as families are able to stay successfully employed.

HUD Response. HUD appreciates the comments in support of this proposal.

Comment. Broader application of the earned income disregard may diminish funds available for other programs. A mandatory earned income disregard will, in some cases, limit housing choice. It will force agencies to disallow earned income that would otherwise enable families to qualify for better housing under the Section 8 voucher program. The impact of this proposed policy on the Housing Choice Voucher Program must be considered before finalizing the rule. The final rule needs to address all these concerns.

HUD Response. HUD took these concerns into consideration in developing the proposed rule, and determined that any fiscal impact will not be significant and will be short-term. HUD believes that the long term benefits of this proposal—helping persons with disabilities obtain and retain employment—outweigh any initial short term impact. As several commenters pointed out, this proposal will help persons with disabilities move toward self-sufficiency, which will increase available funds for other families.

Comment. The earned income disregard should be coordinated with other federal agencies (e.g., SSA, HHS, DOL) to ensure that there are no overlaps or inconsistencies with other applicable programs. The rule does not take into account the way the earned income disregard interfaces other federal programs affecting persons with disabilities.

HUD Response. HUD undertook this coordination when developing its proposed and final rules on "Changes in Admissions and Occupancy Requirements," published on April 30, 1999 (64 FR 23460) and March 29, 2000 (61 FR 16692), which implemented the earned income disregard for public housing (see 24 CFR 960.255). The earned income disregard in § 5.617 is modeled on § 960.255.

Comment. HUD should evaluate the effectiveness of the earned income disregard as an incentive for employment based on the historical

experience of the public housing program before extending it to additional programs. Empirical studies are needed to validate the effectiveness of rent-based work incentives such as the mandatory earned income disregard.

HUD Response. HUD believes that at this time the expansion of earned income disregard to persons with disabilities is an appropriate incentive for employment, and has determined that the costs of implementation of this expanded benefit to persons with disabilities are not significant.

Comment. The Public Housing Reform Act specifically directs that the earned income disregard be applied to public housing. HUD must articulate in the final rule a sufficient justification for interpreting the statute so broadly as to allow extension of the earned income disregard to other programs as contemplated by the rule. The proposed rule did not provide this justification.

HUD Response. Section 3(b) of the U.S. Housing Act of 1937 gives the Secretary the authority to define "income" and therefore through this definition of income allows the Secretary to apply the earned income disregard to HUD's housing voucher program. For the HOME Program, section 104(9) and (1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704) states that the varying median income definitions of low- and very low-income families shall be determined by the Secretary. For the HOPWA program, Section 859(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12908) cites to section 8 of the U.S. Housing Act of 1937 to the end that rental assistance "shall be provided to the extent practicable in the manner provided for under section." This provision refers to rental assistance, not income, and vests in the administrator discretion whether it would be practicable to follow the temporary ineligibility of section 8 income disregards. For the Supportive Housing for the Homeless program, the authorizing statute contains no income limitations. Section 426(d) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11386) states that assisted tenants may be required to pay an occupancy charge in an amount determined by the recipient providing the project, which may not exceed the amount determined under section 3(a) of the U.S. Housing Act of 1937. Therefore, HUD can amend the regulations for this program to provide for use by the housing provider of earned income disregards in establishing its occupancy charges.

Comment. Several commenters requested that HUD extend the earned

income disregard to programs other than the four programs provided in the August 21, 2000 proposed rule. Their comments included the following:

The earned income disregard should be extended to all Section 8 participants, including those receiving Moderate Rehabilitation and Project Based assistance.

The earned income disregard should be extended to all Section 8 program participants, regardless of how the actual program title is styled. Program administration will be much easier if the earned income disregard is made applicable to all Section 8 programs.

The earned income disregard should be extended to persons participating in the Section 811 program.

The earned income disregard should be extended to all households served under Section 202.

The earned income disregard should be extended to Shelter Plus Care recipients.

The earned income disregard should be extended to all persons with disabilities, regardless of the program under which they are participating.

The income disregard should be extended to all persons with disabilities in all types of HUD housing.

HUD Response. As discussed in the preamble to the August 21, 2000, proposed rule, HUD extended the earned income disregard to persons with disabilities in four programs (the HOME Investment Partnerships Program, the Housing Opportunities for Persons with AIDS, Supportive Housing Program, and the Housing Choice Voucher Program) because HUD had the requisite statutory authority to do so. At this time, HUD does not have the statutory authority to extend the earned income disregard to other programs but is seeking such authority.

Comment. The rule does not contain a suitable implementation strategy. There are many questions with regard to implementation of the earned income disregard. HUD should postpone the effective date of any proposed extension of the earned income disregard until HUD can provide additional guidance to PHAs.

HUD Response. As is appropriate for rules, the rule establishes the requirements for application of the earned income disregard. The specifics of how this is to be implemented by public housing agencies (PHAs) will be set out in guidance issued by HUD. HUD issued guidance to PHAs on this subject in connection with the publication of the final rule on Admissions and Occupancy. HUD expects to issue further guidance.

Comment. The Federal government should not substitute its own judgment for that of local housing providers since only at the local level can the costs and benefits of the mandatory income disregard be effectively weighed. Whether or not to incorporate the income disregard into specific programs is a matter best reserved to local discretion.

HUD Response. Consistent with the Public Housing Reform Act, HUD has left considerable discretion to PHAs on the manner of implementation of various requirements imposed by the statute. However, it is primarily the responsibility of Congress and HUD to determine which categories of families will be eligible for certain benefits. Determining whether persons with disabilities will be eligible for the earned income disregard is a determination that should be made by HUD to ensure consistency and fairness in application across the nation, and not a decision that should be made solely at the local level.

Comment. Notwithstanding its beneficial effect on program participants, an expanded earned income disregard will have a negative fiscal impact on local housing providers. HUD should raise administrative allowances to compensate agencies for the increased cost of managing earned income disregard provisions. The expanded earned income disregard will force housing providers to incur greater administrative costs. HUD should therefore include provisions in the rule to "make them whole." Additionally, the use of a selective earned income disregard based on disability and specific program participation status places an undue administrative burden on housing providers since they must compute the earned income disregard in some cases, but not in others. Agencies that administer both Section 8 and Public Housing Programs will find it very difficult to train staff to compute rent one way for Section 8 and another way for Public Housing.

HUD Response. HUD believes that any negative fiscal impact on local housing providers will not be significant. HUD recognizes that with the start-up of implementation of any new requirement or responsibility, there is an increase in administrative burden, but as the processes for implementation are established and once those processes are underway, the administrative burden lessens.

Comment. The proposed earned income disregard will likely result in some individuals in a building receiving a benefit while others do not. This will

lead to friction between tenants and increase management difficulty.

HUD Response. HUD believes that any friction that may be voiced by tenants will be minimal. As HUD noted in the preamble to the August 21, 2000 proposed rule, estimates concerning unemployment indicate that the unemployment rate among persons with significant disabilities is in the range of 70% to 75%, among the highest of disadvantaged groups in the nation. HUD believes that the amendments made by this rule may help to lower this rate for persons residing in HUD assisted housing.

Comment. HUD's earned income disregard policy needs to go further by expanding the amount of income that is excluded and graduating the level of the disregard to allow for a transitional period. The earned income disregard should incorporate a transition period and be applicable to other forms of public assistance. The time period under which earned income may be disregarded is too short since many persons with disabilities cycle in and out of employment. The 48 month, once in a lifetime exclusion contained in the rule should be modified to address the cyclical employment pattern of many persons with disabilities.

HUD Response. The amount of income that is eligible for exclusion is established by statute (see 42 U.S.C. 1437a(b)(5)). The 48 month period arose from considerable public comment on the comparable regulatory provision for public housing (§ 960.255) in the rule on Admissions and Occupancy (see 61 FR 16704). Given the considerable public comment on the period of time in which earned income may be disregarded, HUD declines to modify that period at this time.

Comment. The rule should allow child support paid by a non-custodial parent who earns income or is engaged in educational activities to be excluded from income.

HUD Response. The commenter makes a valid point, but such a change is outside the scope of this rulemaking and needs to be addressed in separate rulemaking.

Comment. While the earned income disregard is an incentive for persons to become employed who are not working, the rule is a disincentive for persons working part-time to become employed full-time. Social Security payment restrictions also compound this problem. More needs to be done to provide income disallowances to help part-time workers become employed full-time.

HUD Response. HUD recognizes that the earned income disregard provided

by statute will not serve as an incentive to all families in all situations. The statutory earned income disregard is limited to income increases as a result of employment of a member of the family who was previously unemployed for one or more years. (See section 3(d) of the U.S. Housing Act of 1937; 42 U.S.C. 1437a(d).) HUD, however, recognizes that some part-time employment should not be considered "previous employment" and has defined by regulation the term "previously unemployed" to include a person who has earned, in the twelve months previous to employment no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage. (See § 5.617 of this rule, and § 960.255 of the public housing regulations.)

Comment. In determining if a person with a disability is previously unemployed for the mandatory period prior to beginning employment, the rule should specifically include time during which the person received public assistance.

HUD Response. Consistent with the statutory language, the rule includes increases in annual incomes resulting during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under part A of title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and welfare-to-work programs. (See § 5.617 of this rule, and § 960.255 of the public housing regulations.)

Comment. The earned income disregard should contain a grandfather clause to allow individuals that are employed at the time of their admission to subsidized housing to take advantage of the offset. The earned income disregard should not be available to persons who are employed at the time they enter assisted housing.

HUD Response. The statute establishes the requirements for eligibility of the earned income disregard and the rule in defining "qualified family" and "previously unemployed" reflects the statutory eligibility requirements. (See § 5.617(a).)

Comment. The definition of "qualified family" in the rule is inconsistent with other regulatory provisions. Section 5.617(b) should be changed to make clear that it includes a family with any adult member with a disability, not just the head of household or spouse, as eligible for the income disregard.

HUD Response. HUD believes that there is no ambiguity here. The definition of "qualified family" in § 5.617 makes no reference to the head of household or spouse, but simply "a family member." Section 960.255, upon which § 5.617 is modeled, also does not refer to the head of household or spouse. HUD believes both regulations are clear and no further modification is needed.

Comment. HUD's income disregard program should dovetail with the Plan to Achieve Self-Sufficiency (PASS) program so that persons with disabilities continue to receive the disregard benefit even after they are no longer participating in PASS. The income disregard should apply to all families with a member participating in the PASS program. The earned income disregard should apply as long as any household member, not just a family member with a disability, is receiving TANF benefits. The earned income disregard should specifically allow eligibility when any family member receives any type of government support, not limited to TANF. The earned income disregard should be applicable to those families receiving "welfare to work" funds.

HUD Response. The contours of the earned income disregard are established by statute. The statute, however, includes as eligible for the earned income disregard a family whose annual income increases, during or within six months, after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under part A of title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and welfare-to-work programs.

C. Specific Issue for Comment

Expansion of the earned income disregard to all families. In the August 21, 2000 proposed rule, HUD advised that although this rule limited the extension of the earned income disregard to persons with disabilities, HUD is analyzing the extension of the earned income disregard to all families served by HUD and HUD specifically solicited comment on this issue. (See 65 FR 50844, column one.)

Comment. A few commenters submitted comments on this issue and their comments were as follows:

The Public Housing Reform Act does not limit the earned income disregard strictly to persons with disabilities. If HUD is going to extend the income disregard to other programs, it should

not be restricted solely to persons with disabilities.

The earned income disregard should be extended to all families not only families with persons with disabilities. However, application of the earned income disregard to all families may diminish the availability of funds for expanding the number of families participating in the Section 8 or other HUD programs. For this reason, we urge HUD to seek the necessary appropriations from Congress to ensure the expansion of this disregard to all programs.

The earned income disregard should be extended to all households served under HOPWA.

HUD Response. HUD appreciates the comments on this issue, and is continuing to study this matter.

III. Findings and Certifications

Environmental Impact

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

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a

significant economic impact on a substantial number of small entities. This rule is limited to expanding existing mandatory expense deductions and earned income disregard to the calculation of income for persons with disabilities in other HUD programs by which the program participants will benefit, and the owners of the housing assisted by these programs will benefit from the uniformity in the program administration this rule presents.

Executive Order 13132, Federalism

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 Executive Order 13132 (entitled "Federalism").

Unfunded Mandates Reform Act

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

List of Subjects

24 CFR Part 5

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

24 CFR Part 92

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

24 CFR Part 200

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

24 CFR Part 236

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

24 CFR Part 574

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

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements.

4 CFR Part 891

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

24 CFR Part 982

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

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

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

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

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

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

3. Section 5.601 is revised to read as follows:

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or

receive assistance in the Section 8 (tenant-based and project-based) and public housing programs;

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

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

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

(2) Owner selection preferences; and

(3) Owner reexamination of family income and composition;

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

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

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

§ 5.603 Definitions.

* * * * *

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

(1) *Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency (PHA)*, *responsible*

entity and *Section 8* are defined in § 5.100.

* * * * *

(b) * * *

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

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

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

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

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

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

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

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

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

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

* * * * *

5. Revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

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

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

(1) \$480 for each dependent;

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

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

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

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

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

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

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

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

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

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

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

Disallowance. Exclusion from annual income.

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

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

(1) Whose annual income increases as a result of employment of a family member who is a person with

disabilities and who was previously unemployed for one or more years prior to employment;

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

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

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

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

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in

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

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

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

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

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

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

§ 92.203 Income determinations.

* * * * *

(d) * * *

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

PART 200—INTRODUCTION TO FHA PROGRAMS

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

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

10. Section 200.1303 is revised to read as follows:

§ 200.1303 Annual income exclusions for the Rent Supplement Program.

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

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

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

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

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

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

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

Subpart D—Rental Assistance Payments

12. Section 236.710 is revised to read as follows:

§ 236.710 Qualified tenant.

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

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

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

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

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

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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

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

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

§ 574.310 General standards for eligible housing activities.

* * * * *

(d) *Resident rent payment.* * * *

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

* * * * *

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

* * * * *

PART 582—SHELTER PLUS CARE

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

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

16. Section 582.310 is revised to read as follows:

§ 582.310 Resident rent.

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

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

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

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

PART 583—SUPPORTIVE HOUSING PROGRAM

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

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

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

§ 583.315 Resident rent.

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

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

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

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

* * * * *

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

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

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

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

§ 891.105 Definitions.

* * * * *

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

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

* * * * *

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

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

* * * * *

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

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

22. In § 891.520, the definitions of *Gross Rent*, *Tenant Rent*, *Total Tenant Payment*, *Utility Allowance*, and *Utility Reimbursement* are revised and a new definition of *Adjusted Income* is added to read as follows:

§ 891.520 Definitions applicable to 202/8 projects.

* * * * *

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

* * * * *

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

* * * * *

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

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

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

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

* * * * *

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

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

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

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

§ 982.201 Eligibility and targeting.

* * * * *

(b) * * *

(3) The annual income (gross income) of an applicant family is used both for

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

* * * * *

Dated: January 10, 2001.

Andrew Cuomo,

Secretary.

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