

(2) Refer the matter to the appropriate official for review as to whether to impose a civil money penalty in accordance with 24 CFR part 30; provided, however, that the Ethics Law Division shall not make a civil money penalty recommendation unless it finds the violation to have been knowing and material. The decision to impose a civil money penalty in a particular matter may be made only upon referral from the Ethics Law Division.

(d) In determining whether a violation is material, the Ethics Law Division shall consider the following factors, as applicable:

(1) The content of the disclosure and its significance to the person to whom the disclosure was made;

(2) The time during the selection process when the disclosure was made;

(3) The person to whom the disclosure was made;

(4) The dollar amount of assistance requested by the person to whom the disclosure was made;

(5) The dollar amount of assistance available for a given competition or program;

(6) The benefit, if any, received or expected by the employee, the employee's relatives or friends, or any other person with whom the employee is affiliated;

(7) The potential injury to the Department.

(e) If the Ethics Law Division determines that there is sufficient information to provide a reasonable basis to believe that a violation of Section 103 or this subpart B has occurred, it may, in addition to referring the matter under 24 CFR part 30, refer the matter to an appropriate HUD official for consideration of any other available disciplinary action. Any referral authorized by this paragraph (e) shall be reported to the Inspector General and may be reported to the employee's supervisor.

§ 4.38 Administrative remedies.

(a) If the Department receives or obtains information providing a reasonable basis to believe that a violation of Section 103 has occurred, the Department may impose a sanction, as determined to be appropriate, upon an applicant for or a recipient of assistance

who has received covered selection information.

(b) In determining whether a sanction is appropriate and if so which sanction or sanctions should be sought, the Secretary shall give consideration to the applicant's conduct with respect to the violation. In so doing, the Secretary shall consider the factors listed at §4.36(d), as well as any history of prior violations in any HUD program, the benefits received or expected, deterrence of future violations and the extent of any complicity in the violation.

(c) The Secretary may impose a sanction authorized by this section whether or not the Ethics Law Division refers a case under 24 CFR part 30, and whether or not a civil money penalty is imposed.

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

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

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, part 5 was amended by changing all references to the term “HA” to read “PHA”, effective Apr. 28, 2000.

Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers

§ 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.

Department means the Department of Housing and Urban Development.

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.

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.

Housing agency (HA) means a State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (“PHA” and “HA” mean the same thing.)

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.

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 other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or

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operation of low-income housing under the 1937 Act.

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.

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

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, §5.100 was amended by revising the introductory text, removing the definition of "housing agency (HA)" and adding definitions of the terms "public housing", and "responsible entity", effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§5.100 Definitions.

The following definitions apply as noted in the respective program regulations:

* * * * *

§5.105 Other Federal requirements.

The following Federal requirements apply as noted in the respective program regulations:

(a) *Nondiscrimination and equal opportunity.* 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; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; 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 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

(b) *Disclosure requirements.* The disclosure requirements and prohibitions of 31 U.S.C. 1352 and implementing regulations at 24 CFR part 87; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 *et seq.*).

(c) *Debarred, suspended or ineligible contractors.* The prohibitions at 24 CFR part 24 on the use of debarred, suspended or ineligible contractors.

(d) *Drug-Free Workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations at 24 CFR part 24.

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, §5.105 was amended by adding, after the phrase "section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at", the phrase "part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*," effective Apr. 28, 2000.

§ 5.107 Audit requirements for non-profit organizations.

Non-profit organizations subject to regulations in the part 200 and part 800 series of title 24 of the CFR shall comply with the audit requirements of revised OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations" (see 24 CFR 84.26). For HUD programs, a non-profit organization is the mortgagor or owner (as these terms are defined in the regulations in the part 200 and part 800 series) and not a related or affiliated organization or entity.

[62 FR 61617, Nov. 18, 1997]

§ 5.110 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

Subpart B—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

AUTHORITY: 42 U.S.C. 3535(d), 3543, 3544, and 11901 *et seq.*

SOURCE: 61 FR 11113, Mar. 18, 1996, unless otherwise noted.

§ 5.210 Purpose, applicability, and Federal preemption.

(a) *Purpose.* This subpart B requires applicants for and participants in covered HUD programs to disclose, and submit documentation to verify, their Social Security Numbers (SSNs). This subpart B also enables HUD and PHAs to obtain income information about applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, in order to verify an applicant's or participant's eligibility for or level of assistance. The purpose of this subpart B is to enable HUD to de-

crease the incidence of fraud, waste, and abuse in the covered programs.

(b) *Applicability.* (1) This subpart B applies to mortgage and loan insurance and coinsurance and housing assistance programs contained in chapter II, subchapter B, and chapters VIII and IX of this title.

(2) The information covered by consent forms described in this subpart involves income information from SWICAs, and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. In addition, consent forms may authorize the collection of other information from applicants and participants to determine eligibility or level of benefits.

(c) *Federal preemption.* This subpart B preempts any State law, including restrictions and penalties, that governs the collection and use of income information to the extent State law is inconsistent with this subpart.

[61 FR 11113, Mar. 18, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, § 5.210(b)(2) was amended in the last sentence by removing after the word "benefits", the phrase "as provided in parts 813 and 913 of this title", effective Apr. 28, 2000.

§ 5.212 Compliance with the Privacy Act and other requirements.

(a) *Compliance with the Privacy Act.* The collection, maintenance, use, and dissemination of SSNs, EINS, any information derived from SSNs and Employer Identification Numbers (EINs), and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act (5 U.S.C. 552a) and all other provisions of Federal, State, and local law.

(b) *Privacy Act notice.* All assistance applicants shall be provided with a Privacy Act notice at the time of application. All participants shall be provided with a Privacy Act notice at each annual income recertification.

§ 5.214 Definitions.

In addition to the definitions in § 5.100, the following definitions apply to this subpart B:

Assistance applicant. Except as excluded pursuant to 42 U.S.C. 3543(b) and

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3544(a)(2), this term means the following:

(1) For any program under 24 CFR parts 215, 221, 236, 290, or 891, or any program under Section 8 of the 1937 Act: A family or individual that seeks rental assistance under the program.

(2) For the public housing program: A family or individual that seeks admission to the program.

(3) For any program under 24 CFR part 235: A homeowner or cooperative member seeking homeownership assistance (including where the individual seeks to assume an existing mortgage).

Computer match means the automated comparison of data bases containing records about individuals.

Computer matching agreement means the agreement that describes the responsibilities and obligations of the parties participating in a computer match.

Consent form means any consent form approved by HUD to be signed by assistance applicants and participants for the purpose of obtaining income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and payments of retirement income), as referenced at 26 U.S.C. 6103(l)(7)(A); and return information for unearned income from the Internal Revenue Service, as referenced at 26 U.S.C. 6103(l)(7)(B). The consent forms expire after a certain time and may authorize the collection of other information from assistance applicants or participants to determine eligibility or level of benefits as provided in §§813.109, 913.109, and 950.315 of this title.

Employer Identification Number (EIN) means the nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation pursuant to sections 6011(b), or corresponding provisions of prior law, or 6109 of the Internal Revenue Code.

Entity applicant. (1) Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), and paragraph (2) of this definition, this term means a partnership, corporation, or any other association or entity, other than an individual owner applicant, that seeks to partici-

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pate as a private owner in any of the following:

(i) The project-based assistance programs under Section 8 of the 1937 Act;

(ii) The programs in 24 CFR parts 215, 221, or 236; or

(iii) The other mortgage and loan insurance programs in 24 CFR parts 201 through 267, except that the term "entity applicant" does not include a mortgagee or lender.

(2) The term does not include a public entity, such as a PHA, IHA, or State Housing Finance Agency.

Federal agency means a department of the executive branch of the Federal Government.

Income information means information relating to an individual's income, including:

(1) All employment income information known to current or previous employers or other income sources that HUD or the processing entity determines is necessary for purposes of determining an assistance applicant's or participant's eligibility for, or level of assistance in, a covered program;

(2) All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law;

(3) With respect to unemployment compensation:

(i) Whether an individual is receiving, has received, or has applied for unemployment compensation;

(ii) The amount of unemployment compensation the individual is receiving or is entitled to receive; and

(iii) The period with respect to which the individual actually received such compensation;

(4) Unearned IRS income and self-employment, wages and retirement income as described in the Internal Revenue Code, 26 U.S.C. 6103(l)(7); and

(5) Wage, social security (Title II), and supplemental security income (Title XVI) data obtained from the Social Security Administration.

Individual owner applicant. Except as excluded pursuant to 42 U.S.C. 3543(b), 3544(a)(2), or paragraph (2) of this definition, this term means:

(1) An individual who seeks to participate as a private owner in any of:

(i) The project-based assistance programs under Section 8 of the 1937 Act; or

(ii) The programs in 24 CFR parts 215, 221, 235 (without homeownership assistance), or 236, including where the individual seeks to assume an existing mortgage; or

(2) An individual who:

(i) Either: (A) Applies for a mortgage or loan insured or coinsured under any of the programs referred to in paragraph (1)(iii) of the definition of "entity applicant" in this section; or (B) Seeks to assume an existing mortgage or loan; and

(ii) Intends to hold the mortgaged property in his or her individual right.

IRS means the Internal Revenue Service.

Owner means the person or entity (or employee of an owner) that leases an assisted dwelling unit to an eligible family and includes, when applicable, a mortgagee.

Participant. Except as excluded pursuant to 42 U.S.C. 3543(b) and 3544(a)(2), this term has the following meaning:

(1) For any program under 24 CFR part 891, or Section 8 of the 1937 Act: A family receiving rental assistance under the program;

(2) For the public housing program: A family or individual that is assisted under the program;

(3) For 24 CFR parts 215, 221, 236, and 290: A tenant or qualified tenant under any of the programs; and

(4) For 24 CFR part 235: A homeowner or a cooperative member receiving homeownership assistance.

Processing entity means the person or entity that, under any of the programs covered under this subpart B, is responsible for making eligibility and related determinations and an income reexamination. (In the Section 8 and public housing programs, the "processing entity" is the "responsible entity" as defined in §5.100.)

Social Security Number (SSN) means the nine-digit number that is assigned

to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

SSA means the Social Security Administration.

State Wage Information Collection Agency (SWICA) means the State agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the State, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

[61 FR 11113, Mar. 18, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, §5.214 was amended by revising paragraph (2) in the definitions for "assistance applicant" and "participant", and by revising the definition for "processing entity", effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§5.214 Definitions.

* * * * *

Assistance applicant. * * *

(2) For any program under 24 CFR parts 904, 950, and 960: A prospective tenant or homebuyer seeking the benefit of the program.

* * * * *

Participant. * * *

(2) For 24 CFR parts 904, 950, 960: A tenant or homebuyer under the program;

* * * * *

Processing entity means the person or entity that, under any of the programs covered under this subpart B, is responsible for making eligibility and related determinations and any income reexamination.

* * * * *

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DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS FOR APPLICANTS AND PARTICIPANTS IN CERTAIN HUD PROGRAMS

§5.216 Disclosure and verification of Social Security and Employer Identification Numbers.

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

(1)(i) The complete and accurate SSN assigned to the assistant applicant and to each member of the assistant applicant's household who is at least six years of age; and

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

(2) If the assistance applicant or any member of the assistance applicant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(b) *Disclosure: 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)(i) The complete and accurate SSNs 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

(ii) The documentation referred to in paragraph (f)(1) of this section to verify the SSNs; or

(2) If any person referred to in paragraph (b)(1)(i) of this section has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(c) *Disclosure: certain officials of entity applicants.* As explained more fully in HUD administrative instructions, each officer, director, principal stockholder, or other official of an entity applicant must submit the following information

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

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

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

(d) *Disclosure: participants—(1) Initial disclosure.* Each participant whose initial determination of eligibility under the program involved was begun before November 6, 1989, must submit the following information to the processing entity at the next regularly scheduled income reexamination for the program involved:

(i)(A) The complete and accurate SSN assigned to the participant and to each member of the participant's family who is at least six years of age; and

(B) The documentation referred to in paragraph (f)(1) of this section to verify each such SSN; or

(ii) If the participant or any member of the participant's household who is at least six years of age has not been assigned an SSN, a certification executed by the individual(s) involved that meets the requirements of paragraph (j) of this section.

(2) *Subsequent disclosure.* Once a participant has disclosed and verified every SSN, or submitted any certification that an SSN has not been assigned, as provided by paragraph (a) of this section (for an assistance applicant) or paragraph (d)(1) (for a pre-existing participant) of this section, the following rules apply:

(i) If the participant's household adds a new member who is at least six years of age, the participant must submit to the processing entity, at the next interim or regularly scheduled income reexamination that includes the new members:

(A) The complete and accurate SSNs assigned to each new member and the documentation referred to in paragraph (f)(1) of this section to verify the SSNs for each new member; or

(B) If the new member has not been assigned an SSN, a certification executed by the individual involved that meets the requirements of paragraph (j) of this section.

(ii) If the participant or any member of the participant's household who is at

least six years of age obtains a previously undisclosed SSN, or has been assigned a new SSN, the participant must submit the following to the processing entity at the next regularly scheduled income reexamination:

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

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

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

(A) HUD; and

(B) In the case of the public housing program or the programs under parts 882 and 887 of this title, the PHA.

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

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

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

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

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

(g) *Special documentation rules for assistance applicants and participants—(1) Certification of inability to meet documentation requirements.* If an individual who is required to disclose his or her

SSN under paragraph (a) (assistance applicants) of this section or paragraph (d) (participants) of this section is able to disclose the SSN, but cannot meet the documentation requirements of paragraph (f)(1) of this section, the assistance applicant or participant must submit to the processing entity the individual's SSN and a certification executed by the individual that the SSN submitted has been assigned to the individual, but that acceptable documentation to verify the SSN cannot be provided.

(2) *Acceptance or certification by processing entity.* Except as provided by paragraph (h) of this section, the processing entity must accept the certification referred to in paragraph (g)(1) of this section and continue to process the assistant applicant's or participant's eligibility to participate in the program involved.

(3) *Effect on assistance applicants.* If the processing entity determines that the assistance applicant is otherwise eligible to participate in the program, the assistance applicant may not become a participant in the program, unless it submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section. During such period, the assistance applicant will retain the position that it occupied in the program at the time the determination of eligibility was made, including its place on any waiting list maintained for the program, if applicable.

(4) *Effect on participants.* If the processing entity determines that the participant otherwise continues to be eligible to participate in the program, participation will continue, provided that the participant submits to the processing entity the documentation required under paragraph (f)(1) of this section within the time period specified in paragraph (g)(5) of this section.

(5) *Time for submitting documentation.* The time period referred to in paragraphs (g)(4) and (5) of this section is 60 calendar days from the date on which the certification referred to in paragraph (g)(1) of this section is executed, except that the processing entity may, in its discretion, extend this period for

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up to an additional 60 days if the individual is at least 62 years of age and is unable to submit the required documentation within the initial 60-day period.

(h) *Rejection of documentation or certification.* The processing entity may reject documentation referred to in paragraph (f) of this section, or a certification provided under paragraphs (a)(2), (b)(2), (d), or (g)(1) of this section, only for such reasons as HUD and the PHA may prescribe in applicable administrative instructions.

(i) *Information on SSNs and EINs.* (1) Information regarding SSNs and SSN cards may be obtained by contacting the local SSA Office or consulting the SSA regulations at 20 CFR chapter III (see, particularly, part 422).

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

(j) *Form and manner of certifications.* The certifications referred to in paragraphs (a)(2), (b)(2), (d), and (g)(1) of this section must be in the form and manner that HUD and the PHA prescribe in applicable administrative instructions. If an individual who is required to execute a certification is less than 18 years of age, the certification must be executed by his or her parent or guardian or, in accordance with administrative instructions, by the individual or another person.

(Approved by the Office of Management and Budget under control number 2502-0204)

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

(a) *Denial of eligibility: 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, and certification requirements specified in §5.216.

(b) *Denial of eligibility: entity applicants.* The processing entity must deny the eligibility of an entity applicant in

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accordance with the provisions governing the program involved; if:

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

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

(c) *Termination of assistance or tenancy: participants.* The processing entity must terminate the assistance or 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, and certification requirements specified in §5.216.

(d) *Cross reference.* Individuals should consult the regulations and administrative instructions for the programs covered under this subpart B for further information on the use of SSNs and EINs in determinations regarding eligibility.

PROCEDURES FOR OBTAINING INCOME INFORMATION ABOUT APPLICANTS AND PARTICIPANTS

§5.230 Consent by assistance applicants and participants.

(a) *Required consent by assistance applicants and participants.* Each member of the family of an assistance applicant or participant who is at least 18 years of age, and each family head and spouse regardless of age, shall sign one or more consent forms.

(b) *Consent authorization—(1) To whom and when.* The assistance applicant shall submit the signed consent forms to the processing entity when eligibility under a covered program is being determined. A participant shall sign and submit consent forms at the next regularly scheduled income reexamination. Assistance applicants and participants shall be responsible for the signing and submitting of consent forms by each applicable family member.

(2) *Subsequent consent forms—special cases.* Participants are required to sign and submit consent forms at the next interim or regularly scheduled income

reexamination under the following circumstances:

- (i) When any person 18 years or older becomes a member of the family;
- (ii) When a member of the family turns 18 years of age; and
- (iii) As required by HUD or the PHA in administrative instructions.

(c) *Consent form—contents.* The consent form required by this section shall contain, at a minimum, the following:

(1) A provision authorizing HUD and PHAs to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and to maintain continued assistance under a covered program; and

(2) A provision authorizing HUD, PHAs, or the owner responsible for determining eligibility for or the level of assistance to verify with previous or current employers income information pertinent to the assistance applicant's or participant's eligibility for or level of assistance under a covered program;

(3) A provision authorizing HUD to request income return information from the IRS and the SSA for the sole purpose of verifying income information pertinent to the assistance applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the date the consent form is signed.

§ 5.232 Penalties for failing to sign consent forms.

(a) *Denial or termination of benefits.* In accordance with the provisions governing the program involved, if the assistance applicant or participant, or any member of the assistance applicant's or participant's family, does not sign and submit the consent form as required in § 5.230, then:

(1) The processing entity shall deny assistance to and admission of an assistance applicant;

(2) Assistance to, and the tenancy of, a participant may be terminated.

(b) *Cross references.* Individuals should consult the regulations and administrative instructions for the programs

covered under this subpart B for further information on the use of income information in determinations regarding eligibility.

§ 5.234 Requests for information from SWICAs and Federal agencies; restrictions on use.

(a) *Information available from SWICAs and Federal agencies—to whom and what.*

Income information will generally be obtained through computer matching agreements between HUD and a SWICA or Federal agency, or between a PHA and a SWICA, as described in paragraph (c) of this section. Certification that the applicable assistance applicants and participants have signed appropriate consent forms and have received the necessary Privacy Act notice is required, as follows:

(1) When HUD requests the computer match, the processing entity shall certify to HUD; and

(2) When the PHA requests the computer match, the PHA shall certify to the SWICA.

(b) *Restrictions on use of information.* The restrictions of 42 U.S.C. 3544(c)(2)(A) apply to the use by HUD or a PHA of income information obtained from a SWICA. The restrictions of 42 U.S.C. 3544(c)(2)(A) and of 26 U.S.C. 6103(l)(7) apply to the use by HUD or a PHA of income information obtained from the IRS or SSA.

(c) *Computer matching agreements.* Computer matching agreements shall specify the purpose and the legal authority for the match, and shall include a description of the records to be matched, a statement regarding disposition of information generated through the match, a description of the administrative and technical safeguards to be used in protecting the information obtained through the match, a description of the use of records, the restrictions on duplication and re-disclosure, a certification, and the amount that will be charged for processing a request.

(Approved by the Office of Management and Budget under control number 2508-0008)

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§ 5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency.

(a) *Termination, denial, suspension, or reduction of assistance.* The provisions of 42 U.S.C. 3544(c)(2)(B) and (C) shall govern the termination, denial, suspension, or reduction of benefits for an assistance applicant or participant based on income information obtained from a SWICA or a Federal agency. Procedures necessary to comply with these provisions are provided in paragraph (b) of this section.

(b) *Procedures for independent verification.* (1) Any determination or redetermination of family income verified in accordance with this paragraph must be carried out in accordance with the requirements and procedures applicable to the individual covered program. Independent verification of information obtained from a SWICA or a Federal agency may be:

- (i) By HUD;
- (ii) In the case of the public housing program, by a PHA; or
- (iii) In the case of any Section 8 program, by a PHA acting as contract administrator under an ACC.

(2) Upon receiving income information from a SWICA or a Federal agency, HUD or, when applicable, the PHA shall compare the information with the information about a family's income that was:

- (i) Provided by the assistance applicant or participant to the PHA; or
- (ii) Obtained by the owner (or mortgagee, as applicable) from the assistance applicant or participant or from his or her employer.

(3) When the income information reveals an employer or other income source that was not disclosed by the assistance applicant or participant, or when the income information differs substantially from the information received from the assistance applicant or participant or from his or her employer:

- (i) HUD or, as applicable or directed by HUD, the PHA shall request the undisclosed employer or other income source to furnish any information necessary to establish an assistance applicant's or participant's eligibility for or

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level of assistance in a covered program. This information shall be furnished in writing, as directed to:

(A) HUD, with respect to programs under parts 215, 221, 235, 236, or 290 of this title;

(B) The responsible entity (as defined in § 5.100) in the case of the public housing program or any Section 8 program.

(C) The owner or mortgagee, as applicable, with respect to the rent supplement, Section 221(d)(3) BMIR, Section 235 homeownership assistance, or Section 236 programs.

(ii) HUD or the PHA may verify the income information directly with an assistance applicant or participant. Such verification procedures shall not include any disclosure of income information prohibited under paragraph (b)(6) of this section.

(4) HUD and the PHA shall not be required to pursue these verification procedures when the sums of money at issue are too small to raise an inference of fraud or justify the expense of independent verification and the procedures related to termination, denial, suspension, or reduction of assistance.

(5) Based on the income information received from a SWICA or Federal agency, HUD or the PHA, as appropriate, may inform an owner (or mortgagee) that an assistance applicant's or participant's eligibility for or level of assistance is uncertain and needs to be verified. The owner (or mortgagee) shall then confirm the assistance applicant's or participant's income information by checking the accuracy of the information with the employer or other income source, or directly with the family.

(6) Nondisclosure of Income information. Neither HUD nor the PHA may disclose income information obtained from a SWICA directly to an owner (unless a PHA is the owner). Disclosure of income information obtained from the SSA or IRS is restricted under 26 U.S.C. § 6103(l)(7) and 42 U.S.C. 3544.

(c) *Opportunity to contest.* HUD, the PHA, or the owner (or mortgagee, as applicable) shall promptly notify any assistance applicant or participant in writing of any adverse findings made on the basis of the information verified in accordance with paragraph (b) of this section. The assistance applicant

or participant may contest the findings in the same manner as applies to other information and findings relating to eligibility factors under the applicable program. Termination, denial, suspension, or reduction of assistance shall be carried out in accordance with requirements and procedures applicable to the individual covered program, and shall not occur until the expiration of any notice period provided by the statute or regulations governing the program.

[61 FR 11113, Mar. 18, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, § 5.236 was amended by revising paragraphs (b)(1), (b)(3)(i)(B), and (C), effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency.

* * * * *

(b) * * * (1) Any determination or redetermination of family income made on the basis of information verified in accordance with paragraph (b) of this section shall be carried out in accordance with the requirements and procedures applicable to the individual covered program. Independent verification of information obtained from a SWICA or a Federal agency may be:

- (i) By HUD; and
- (ii) By a HA, when the benefit to be provided to the assistance applicant or participant is under a program in parts 880, 882, 886, 887, 891, 904, 950, or 960 of this title, including when the HA is the contract administrator for the owner.

* * * * *

- (3) * * *
 - (i) * * *
 - (B) The HA, with respect to programs under parts 880, 882, 886, 887, 891, 904, 950, or 960 of this title for which the HA is responsible for determining eligibility or level of benefits; or

(C) The owner (or mortgagee, as applicable), with respect to programs under parts 215, 221, 235, 236, or 290 of this title, or when the owner is responsible under parts 880, 882, 886, 887, 891, 904, 950, or 960 of this title for determining eligibility or the level of assistance; or

* * * * *

§ 5.238 Criminal and civil penalties.

Persons who violate the provisions of 42 U.S.C. 3544 or 26 U.S.C. 6103(l)(7) with respect to the use and disclosure of income information may be subject to civil or criminal penalties under 42 U.S.C. 3544(c)(3), 26 U.S.C. 7213(a), or 18 U.S.C. 1905.

§ 5.240 Family disclosure of income information to the responsible entity and verification.

(a) This section applies to families that reside in dwelling units with assistance under the public housing program, the Section 8 tenant-based assistance programs, or for which project-based assistance is provided under the Section 8, Section 202, or Section 811 program.

(b) The family must promptly furnish to the responsible entity any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income.

(c) The responsible entity must verify the accuracy of the income information received from the family, and change the amount of the total tenant payment, tenant rent or Section 8 housing assistance payment, or terminate assistance, as appropriate, based on such information.

[65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, § 5.240 was added, effective Apr. 28, 2000.

Subpart C—Pet Ownership for the Elderly or Persons With Disabilities

AUTHORITY: 42 U.S.C. 1701r-1 and 3535(d).

GENERAL REQUIREMENTS

§ 5.300 Purpose.

(a) This subpart implements section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701r-1) as it pertains to projects for the elderly or persons with disabilities under:

- (1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner;

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(2) Projects assisted under the programs contained in chapter VIII of this title 24; and

(3) The public housing program.

(b) [Reserved]

[61 FR 5202, Feb. 9, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, § 5.300 was amended by revising paragraph (a)(3), effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.300 Purpose.

(a) * * *

(3) The public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*). This part does not apply to Indian housing administered under title II of that Act.

* * * * *

§ 5.303 Exclusion for animals that assist persons with disabilities.

(a) This subpart C does not apply to animals that are used to assist persons with disabilities. Project owners and PHAs may not apply or enforce any pet rules developed under this subpart against individuals with animals that are used to assist persons with disabilities. This exclusion applies to animals that reside in projects for the elderly or persons with disabilities, as well as to animals that visit these projects.

(1) A project owner may require resident animals to qualify for this exclusion. Project owners must grant this exclusion if:

(i) The tenant or prospective tenant certifies in writing that the tenant or a member of his or her family is a person with a disability;

(ii) The animal has been trained to assist persons with that specific disability; and

(iii) The animal actually assists the person with a disability.

(2) [Reserved]

(b) Nothing in this subpart C:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes project owners or PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that project owners or PHAs may have to regulate

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animals that assist persons with disabilities, under Federal, State, or local law.

§ 5.306 Definitions.

Common household pet means:

(1) *For purposes of Housing programs:*

A domesticated animal, such as a dog, cat, bird, rodent (including a rabbit), fish, or turtle, that is traditionally kept in the home for pleasure rather than for commercial purposes. Common household pet does not include reptiles (except turtles). If this definition conflicts with any applicable State or local law or regulation defining the pets that may be owned or kept in dwelling accommodations, the State or local law or regulation shall apply. This definition shall not include animals that are used to assist persons with disabilities.

(2) *For purposes of Public Housing programs:* PHAs may define the term "common household pet" under § 5.318.

Elderly or disabled family means:

(1) *For purposes of Housing programs:*

An elderly person, a person with a disability, or an elderly or disabled family for purposes of the program under which a project for the elderly or persons with disabilities is assisted or has its mortgage insured.

(2) *For purposes of Public Housing programs:* (i) An elderly person, a person with a disability, or an elderly or disabled family as defined in § 5.403 in subpart A of this part.

(ii) [Reserved]

Housing programs means:

(1) The housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner; and

(2) The programs contained in chapter VIII of this title 24 that assist rental projects that meet the definition of project for the elderly or persons with disabilities in this subpart C.

Project for the elderly or persons with disabilities means:

(1) *For purposes of Housing programs:*

(i) A specific rental or cooperative multifamily property that, unless currently owned by HUD, is subject to a first mortgage, and:

(A) That is assisted under statutory authority identified by HUD through notice;

(B) That was designated for occupancy by elderly or disabled families when funds for the project were reserved, or when the commitment to insure the mortgage was issued or, of not then so designated, that is designated for such occupancy in an effective amendment to the regulatory agreement covering the project, made pursuant to the project owner's request, and that is assisted or insured under one of the programs identified by HUD through notice; or

(C) For which preference in tenant selection is given for all units in the project to elderly or disabled families and that is owned by HUD or assisted under one of the programs identified by HUD through notice.

(ii) This term does not include health and care facilities that have mortgage insurance under the National Housing Act. This term also does not include any of the project owner's other property that does not meet the criteria contained in any one of paragraphs (1)(i)(A) through (C) of this definition, even if the property is adjacent to or under joint or common management with such specific property.

(2) *For purposes of Public Housing programs:* Any project assisted under title I of the United States Housing Act of 1937 (other than under section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly or persons with disabilities at its inception or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed-use project) to elderly or disabled families. For purposes of this part, this term does not include projects assisted the Low-Rent Housing Homeownership Opportunity program or under title II of the United States Housing Act of 1937.

Project owner means an owner (including HUD, where HUD is the owner) or manager of a project for the elderly or persons with disabilities, or an agent authorized to act for an owner or manager of such housing.

Public Housing Agency (PHA) is defined in §5.100.

Public Housing programs means the public housing programs administered

by the Assistant Secretary for Public and Indian Housing under title I of the United States Housing Act of 1937.

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, §5.306 was amended by removing the definition for "Public Housing programs", effective Apr. 28, 2000.

§5.309 Prohibition against discrimination.

Except as otherwise specifically authorized under this subpart no project owner or PHA that owns or manages a project for the elderly or persons with disabilities may:

(a) As a condition of tenancy or otherwise, prohibit or prevent any tenant of such housing from owning common household pets or having such pets living in the tenant's dwelling unit; or

(b) Restrict or discriminate against any person in connection with admission to, or continued occupancy of, such housing by reason of the person's ownership of common household pets or the presence of such pets in the person's dwelling unit.

§5.312 Notice to tenants.

(a) During the development of pet rules as described in §§5.353 or 5.380, the project owner or PHA shall serve written notice on all tenants of projects for the elderly or persons with disabilities in occupancy at the time of service, stating that:

(1) Tenants are permitted to own and keep common household pets in their dwelling units, in accordance with the pet rules (if any) promulgated under this subpart C;

(2) Animals that are used to assist persons with disabilities are excluded from the requirements of this subpart C, as provided in §5.303;

(3) Tenants may, at any time, request a copy of any current pet rule developed under this subpart C (as well as any current proposed rule or proposed amendment to an existing rule); and

(4) Tenants may request that their leases be amended under §5.321 to permit common household pets.

(b) The project owner or PHA shall provide to each applicant for tenancy when he or she is offered a dwelling

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unit in a project for the elderly or persons with disabilities, the written notice specified in paragraphs (a) (1), (2), and (3) of this section.

(c) If a PHA chooses not to promulgate pet rules, the notice shall be served within 60 days of the effective date of this part. PHAs shall serve notice under this section in accordance with their normal service of notice procedures.

§ 5.315 Content of pet rules: General requirements.

(a) *Housing programs.* The project owner shall prescribe reasonable rules to govern the keeping of common household pets. The pet rules must include the mandatory rules described in § 5.350 and may, unless otherwise noted in this subpart C, include other discretionary provisions as provided in § 5.318.

(b) *Public Housing programs.* (1) PHAs may choose not to promulgate rules governing the keeping of common household pets or may include rules as provided in § 5.318. PHAs may elect to include provisions based on those in § 5.350. If they so choose, the PHAs may modify the provisions in § 5.350 in any manner consistent with this subpart C.

(2) If PHAs choose to promulgate pet rules, tenants must be permitted to own and keep pets in their units in accordance with the terms and conditions of their leases, the provisions of this subpart C, and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(3) PHAs that choose not to promulgate pet rules, shall not impose, by lease modification or otherwise, any requirement that is inconsistent with the provisions of this subpart C.

(c) *Use of discretion.* (1) This subpart C does not define with specificity the limits of the project owners' or PHAs' discretion to promulgate pet rules. Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the pet rules should be:

(i) Reasonably related to furthering a legitimate interest of the project owner or PHA, such as the owner's or PHA's interest in providing a decent, safe, and sanitary living environment for existing and prospective tenants

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and in protecting and preserving the physical condition of the project and the owner's or PHA's financial interest in it; and

(ii) Drawn narrowly to achieve the owner's or PHA's legitimate interests, without imposing unnecessary burdens and restrictions on pet owners and prospective pet owners.

(2) Where a project owner or PHA has discretion to prescribe pet rules under this subpart C, the owner or PHA may vary the rules' content among projects and within individual projects, based on factors such as the size, type, location, and occupancy of the project or its units, provided that the applicable rules are reasonable and do not conflict with any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

(d) *Conflict with State or local law.* The pet rules adopted by the project owner or PHA shall not conflict with applicable State or local law or regulations. If such a conflict may exist, the State and local law or regulations shall apply.

§ 5.318 Discretionary pet rules.

Pet rules promulgated by project owners and PHAs may include, but are not limited to, consideration of the following factors:

(a) *Definitions of "common household pet"*—(1) *For Public Housing programs.* The pet rules established by a PHA may contain a reasonable definition of a common household pet.

(2) *For Housing programs.* Project owners wishing to define "common household pet" in their pet rules must use the Housing programs definition of the term in § 5.306.

(b) *Density of tenants and pets.* (1)(i) The pet rules established under this section may take into account tenant and pet density. The pet rules may place reasonable limitations on the number of common household pets that may be allowed in each dwelling unit. In the case of group homes, the pet rules may place reasonable limitations on the number of common household pets that may be allowed in each home.

(ii) *For Housing programs.* Under these rules, project owners may limit the number of four-legged, warm-blooded

pets to one pet in each dwelling unit or group home.

(iii) Other than the limitations described in this paragraph (b)(1), the pet rules may not limit the total number of pets allowed in the project.

(2) As used in paragraph (b)(1) of this section, the term "group home" means:

(i) *For purposes of Housing programs.* A small, communal living arrangement designed specifically for individuals who are chronically mentally ill, developmentally disabled, or physically disabled who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(ii) *For purposes of Public Housing programs.* A dwelling or dwelling unit for the exclusive residential use of elderly persons or persons with disabilities who are not capable of living completely independently and who require a planned program of continual supportive services or supervision (other than continual nursing, medical or psychiatric care).

(c) *Pet size and pet type.* The pet rules may place reasonable limitations on the size, weight, and type of common household pets allowed in the project.

(d) *Potential financial obligations of tenants—(1) Pet deposits.* The pet rules may require tenants who own or keep pets in their units to pay a refundable pet deposit. In the case of project owners, this pet deposit shall be limited to those tenants who own or keep cats or dogs in their units. This deposit is in addition to any other financial obligation generally imposed on tenants of the project. The project owner or PHA may use the pet deposit only to pay reasonable expenses directly attributable to the presence of the pet in the project, including (but not limited to) the cost of repairs and replacements to, and fumigation of, the tenant's dwelling unit and, for project owners, the cost of animal care facilities under §5.363. The project owner or PHA shall refund the unused portion of the pet deposit to the tenant within a reasonable time after the tenant moves from the project or no longer owns or keeps a pet (or a cat or dog in the case of project owners) in the dwelling unit.

(2) *Housing programs: Maximum pet deposit.* (i) Pet deposits for the following

tenants shall not exceed an amount periodically fixed by HUD through notice.

(A) Tenants whose rents are subsidized (including tenants of a HUD-owned project, whose rents were subsidized before HUD acquired it) under one of the programs identified by HUD through notice.

(B) Tenants who live in a project assisted (including tenants who live in a HUD-owned project that was assisted before HUD acquired it) under one of the programs identified by HUD through notice.

(C) For all other tenants of projects for the elderly or persons with disabilities, the pet deposit shall not exceed one month's rent at the time the pet is brought onto the premises.

(ii) In establishing the maximum amount of pet deposit under paragraph (d)(2)(i) of this section, HUD will consider factors such as:

(A) Projected, estimated expenses directly attributable to the presence of pets in the project;

(B) The ability of project owners to offset such expenses by use of security deposits or HUD-reimbursable expenses; and

(C) The low income status of tenants of projects for the elderly or persons with disabilities.

(iii) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the pet rules shall provide for gradual accumulation of the deposit by the pet owner through an initial payment not to exceed \$50 when the pet is brought onto the premises, and subsequent monthly payments not to exceed \$10 per month until the amount of the deposit is reached.

(iv) For pet deposits subject to paragraphs (d)(2)(i)(B) and (C) of this section, the pet rules may provide for gradual accumulation of the deposit by the pet owner.

(v) The project owner may (subject to the HUD-prescribed limits) increase the amount of the pet deposit by amending the house pet rules in accordance with §5.353.

(A) For pet deposits subject to paragraph (d)(2)(i)(A) of this section, the house pet rules shall provide for gradual accumulation of any such increase

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not to exceed \$10 per month for all deposit amounts that are being accumulated.

(B) [Reserved]

(vi) Any pet deposit that is established within the parameters set forth by paragraph (d)(2) of this section shall be deemed reasonable for purposes of this subpart C.

(3) *Public Housing programs: Maximum pet deposit.* The maximum amount of pet deposit that may be charged by the PHA, on a per dwelling unit basis, shall not exceed the higher of the Total Tenant Payment (as defined in 24 CFR 913.102) or such reasonable fixed amount as the PHA may require. The pet rules may permit gradual accumulation of the pet deposit by the pet owner.

(4) *Housing programs: Waste removal charge.* The pet rules may permit the project owner to impose a separate waste removal charge of up to five dollars (\$5) per occurrence on pet owners that fail to remove pet waste in accordance with the prescribed pet rules. Any pet waste removal charge that is within this five dollar (\$5) limitation shall be deemed to be a reasonable amount for the purposes of this subpart C.

(5) The pet deposit (for Housing and Public Housing programs) and waste removal charge (for Housing programs) are not part of the rent payable by the tenant. Except as provided in paragraph (d) of this section for Housing programs and, paragraph (d) of this section and 24 CFR 966.4(b) for Public Housing programs, project owners or PHAs may not prescribe pet rules that impose additional financial obligations on pet owners that are designed to compensate the project owner or PHA for costs associated with the presence of pets in the project, including (but not limited to) requiring pet owners:

(i) To obtain liability or other insurance to cover damage caused by the pet;

(ii) To agree to be strictly liable for all damages caused by the pet where this liability is not otherwise imposed by State or local law, or

(iii) To indemnify the project owner for pet-related litigation and attorney's fees.

(e) *Standards of pet care.* The pet rules may prescribe standards of pet care

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and handling, but must be limited to those necessary to protect the condition of the tenant's unit and the general condition of the project premises, or to protect the health or safety of present tenants, project employees, and the public. The pet rules may not require pet owners to have any pet's vocal cords removed. Permitted rules may:

(1) Bar pets from specified common areas (such as lobbies, laundry rooms, and social rooms), unless the exclusion will deny a pet reasonable ingress and egress to the project or building.

(2) Require the pet owner to control noise and odor caused by a pet.

(3) Housing programs: Project owners may also:

(i) Require pet owners to have their dogs and cats spayed or neutered; and

(ii) Limit the length of time that a pet may be left unattended in a dwelling unit.

(f) *Pet licensing.* The pet rules may require pet owners to license their pets in accordance with applicable State and local laws and regulations. (Failure of the pet rules to contain this requirement does not relieve the pet owner of responsibility for complying with applicable State and local pet licensing requirements.)

(g) *Public Housing programs: Designated pet areas.* (1) PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Similarly, the pet rules may designate buildings, floors of buildings, or sections of buildings for residency generally by pet-owning tenants. The PHA may direct such initial tenant moves as may be necessary to establish pet and no-pet areas. The PHA may not refuse to admit (or delay admission of) an applicant for tenancy on the grounds that the applicant's admission would violate a pet or no-pet area. The PHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary (or both) to accommodate such applicants for tenancy or to meet the changing needs of existing tenants.

(2) Project owners may not designate pet areas in buildings in their pet rules.

(h) *Pets temporarily on the premises.* The pet rules may exclude from the project pets not owned by a tenant that are to be kept temporarily on the project premises. For the purposes of paragraph (h) of this section, pets are to be kept “temporarily” if they are to be kept in the tenant’s dwelling accommodations for a period of less than 14 consecutive days and nights. HUD, however, encourages project owners and PHAs to permit the use of a visiting pet program sponsored by a humane society, or other nonprofit organization.

§ 5.321 Lease provisions.

(a) *Lease provisions.* (1) PHAs which have established pet rules and project owners shall ensure that the leases for all tenants of projects for the elderly or persons with disabilities:

(i) State that tenants are permitted to keep common household pets in their dwelling units (subject to the provisions of this subpart and the pet rules);

(ii) Shall incorporate by reference the pet rules promulgated by the project owner or PHA;

(iii) Shall provide that the tenant agrees to comply with these rules; and

(iv) Shall state that violation of these rules may be grounds for removal of the pet or termination of the pet owner’s tenancy (or both), in accordance with the provisions of this subpart and applicable regulations and State or local law.

(2) [Reserved]

(b) Where a PHA has not established pet rules, the leases of all tenants of such projects shall not contain any provisions prohibiting the owning or keeping of common household pets, and shall state that owning and keeping of such pets will be subject to the general obligations imposed on the PHA and tenants in the lease and any applicable State or local law or regulation governing the owning or keeping of pets in dwelling accommodations.

§ 5.324 Implementation of lease provisions.

The lease for each tenant of a project for the elderly or persons with disabilities who is admitted on or after the date on which this subpart C is imple-

mented shall contain the lease provisions described in § 5.321 and, if applicable, § 5.360. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the provisions described in § 5.321 and, if applicable, § 5.360:

(a) For Housing programs:

(1) Upon renewal of the lease and in accordance with any applicable regulation; and

(2) When a Housing program tenant registers a common household pet under § 5.350

(b) For Public Housing programs:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulation; and

(2) When a Public Housing program tenant wishes to own or keep a common household pet in his or her unit.

§ 5.327 Nuisance or threat to health or safety.

Nothing in this subpart C prohibits a project owner, PHA, or an appropriate community authority from requiring the removal of any pet from a project, if the pet’s conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

PET OWNERSHIP REQUIREMENTS FOR HOUSING PROGRAMS

§ 5.350 Mandatory pet rules for housing programs.

Mandatory rules. The project owner must prescribe the following pet rules:

(a) *Inoculations.* The pet rules shall require pet owners to have their pets inoculated in accordance with State and local laws.

(b) *Sanitary standards.* (1) The pet rules shall prescribe sanitary standards to govern the disposal of pet waste. These rules may:

(i) Designate areas on the project premises for pet exercise and the deposit of pet waste;

(ii) Forbid pet owners from exercising their pets or permitting their pets to deposit waste on the project premises outside the designated areas;

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(iii) Require pet owners to remove and properly dispose of all removable pet waste; and

(iv) Require pet owners to remove pets from the premises to permit the pet to exercise or deposit waste, if no area in the project is designated for such purposes.

(2) In the case of cats and other pets using litter boxes, the pet rules may require the pet owner to change the litter (but not more than twice each week), may require pet owners to separate pet waste from litter (but not more than once each day), and may prescribe methods for the disposal of pet waste and used litter.

(c) *Pet restraint.* The pet rules shall require that all cats and dogs be appropriately and effectively restrained and under the control of a responsible individual while on the common areas of the project.

(d) *Registration.* (1) The pet rules shall require pet owners to register their pets with the project owner. The pet owner must register the pet before it is brought onto the project premises, and must update the registration at least annually. The project owner may coordinate the annual update with the annual reexamination of tenant income, if applicable. The registration must include:

(i) A certificate signed by a licensed veterinarian or a State or local authority empowered to inoculate animals (or designated agent of such an authority) stating that the pet has received all inoculations required by applicable State and local law;

(ii) Information sufficient to identify the pet and to demonstrate that it is a common household pet; and

(iii) The name, address, and phone number of one or more responsible parties who will care for the pet if the pet owner dies, is incapacitated, or is otherwise unable to care for the pet.

(2) The project owner may require the pet owner to provide additional information necessary to ensure compliance with any discretionary rules prescribed under § 5.318, and shall require the pet owner to sign a statement indicating that he or she has read the pet rules and agrees to comply with them.

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(3) The pet rules shall permit the project owner to refuse to register a pet if:

(i) The pet is not a common household pet;

(ii) The keeping of the pet would violate any applicable house pet rule;

(iii) The pet owner fails to provide complete pet registration information or fails annually to update the pet registration; or

(iv) The project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament may be considered as a factor in determining the prospective pet owner's ability to comply with the pet rules and other lease obligations.

(4) The project owner may not refuse to register a pet based on a determination that the pet owner is financially unable to care for the pet or that the pet is inappropriate, based on the therapeutic value to the pet owner or the interests of the property or existing tenants.

(5) The pet rules shall require the project owner to notify the pet owner if the project owner refuses to register a pet. The notice shall state the basis for the project owner's action and shall be served on the pet owner in accordance with the requirements of § 5.353(f)(1)(i) or (ii). The notice of refusal to register a pet may be combined with a notice of pet violation as required in § 5.356.

§ 5.353 Housing programs: Procedure for development of pet rules.

(a) *General.* Project owners shall use the procedures specified in this section to promulgate the pet rules referred to in §§ 5.318 and 5.350.

(b) *Development and notice of proposed pet rules.* Project owners shall develop proposed rules to govern the owning or keeping of common household pets in projects for the elderly or persons with disabilities. Notice of the proposed pet rules shall be served on each tenant of the project as provided in paragraph (f) of this section. The notice shall:

(1) Include the text of the proposed rules;

(2) State that tenants or tenant representatives may submit written comments on the rules; and

(3) State that all comments must be submitted to the project owner no later than 30 days from the effective date of the notice of the proposed rules.

(4) The notice may also announce the date, time, and place for a meeting to discuss the proposed rules (as provided in paragraph (c) of this section).

(c) *Tenant consultation.* Tenants or tenant representatives may submit written comments on the proposed pet rules to the project owner by the date specified in the notice of proposed rules. In addition, the owner may schedule one or more meetings with tenants during the comment period to discuss the proposed rules. Tenants and tenant representatives may make oral comments on the proposed rules at these meetings. The project owner must consider comments made at these meetings only if they are summarized, reduced to writing, and submitted to the project owner before the end of the comment period.

(d) *Development and notice of final pet rules.* The project owner shall develop the final rules after reviewing tenants' written comments and written summaries of any owner-tenant meetings. The project owner may meet with tenants and tenant representatives to attempt to resolve issues raised by the comments. Subject to this subpart C, the content of the final pet rules, however, is within the sole discretion of the project owner. The project owner shall serve on each tenant of the project, a notice of the final pet rules as provided in paragraph (f) of this section. The notice must include the text of the final pet rules and must specify the effective date of the final pet rules.

(e) *Amendment of pet rules.* The project owner may amend the pet rules at any time by following the procedure for the development of pet rules specified in paragraphs (b) through (d) of this section.

(f) *Service of notice.* (1) The project owner must serve the notice required under this section by:

(i) Sending a letter by first class mail, properly stamped and addressed to the tenant at the dwelling unit, with a proper return address; or

(ii) Serving a copy of the notice on any adult answering the door at the tenant's leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by attaching the notice to the door; or

(iii) For service of notice to tenants of a high-rise building, posting the notice in at least three conspicuous places within the building and maintaining the posted notices intact and in legible form for 30 days. For purposes of paragraph (f) of this section, a high-rise building is a structure that is equipped with an elevator and has a common lobby.

(2) For purposes of computing time periods following service of the notice, service is effective on the day that all notices are delivered or mailed, or in the case of service by posting, on the day that all notices are initially posted.

§ 5.356 Housing programs: Pet rule violation procedures.

(a) *Notice of pet rule violation.* If a project owner determines on the basis of objective facts, supported by written statements, that a pet owner has violated a rule governing the owning or keeping of pets; the project owner may serve a written notice of pet rule violation on the pet owner in accordance with § 5.353(f)(1)(i) or (ii). The notice of pet rule violation must:

(1) Contain a brief statement of the factual basis for the determination and the pet rule or rules alleged to be violated;

(2) State that the pet owner has 10 days from the effective date of service of the notice to correct the violation (including, in appropriate circumstances, removal of the pet) or to make a written request for a meeting to discuss the violation;

(3) State that the pet owner is entitled to be accompanied by another person of his or her choice at the meeting; and

(4) State that the pet owner's failure to correct the violation, to request a meeting, or to appear at a requested meeting may result in initiation of procedures to terminate the pet owner's tenancy.

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(b)(1) *Pet rule violation meeting.* If the pet owner makes a timely request for a meeting to discuss an alleged pet rule violation, the project owner shall establish a mutually agreeable time and place for the meeting but no later than 15 days from the effective date of service of the notice of pet rule violation (unless the project owner agrees to a later date). At the pet rule violation meeting, the pet owner and project owner shall discuss any alleged pet rule violation and attempt to correct it. The project owner may, as a result of the meeting, give the pet owner additional time to correct the violation.

(2) *Notice for pet removal.* If the pet owner and project owner are unable to resolve the pet rule violation at the pet rule violation meeting, or if the project owner determines that the pet owner has failed to correct the pet rule violation within any additional time provided for this purpose under paragraph (b)(1) of this section, the project owner may serve a written notice on the pet owner in accordance with § 5.353(f)(1) (i) or (ii) (or at the meeting, if appropriate), requiring the pet owner to remove the pet. The notice must:

(i) Contain a brief statement of the factual basis for the determination and the pet rule or rules that have been violated;

(ii) State that the pet owner must remove the pet within 10 days of the effective date of service of the notice of pet removal (or the meeting, if notice is served at the meeting); and

(iii) State that failure to remove the pet may result in initiation of procedures to terminate the pet owner's tenancy.

(c) *Initiation of procedures to remove a pet or terminate the pet owner's tenancy.*

(1) The project owner may not initiate procedures to terminate a pet owner's tenancy based on a pet rule violation, unless:

(i) The pet owner has failed to remove the pet or correct a pet rule violation within the applicable time period specified in this section (including any additional time permitted by the owner); and

(ii) The pet rule violation is sufficient to begin procedures to terminate the pet owner's tenancy under the

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terms of the lease and applicable regulations.

(2) The project owner may initiate procedures to remove a pet under § 5.327 at any time, in accordance with the provisions of applicable State or local law.

§ 5.359 Housing programs: Rejection of units by applicants for tenancy.

(a) An applicant for tenancy in a project for the elderly or persons with disabilities may reject a unit offered by a project owner if the unit is in close proximity to a dwelling unit in which an existing tenant of the project owns or keeps a common household pet. An applicant's rejection of a unit under this section shall not adversely affect his or her application for tenancy in the project, including (but not limited to) his or her position on the project waiting list or qualification for any tenant selection preference.

(b) Nothing in this subpart C imposes a duty on project owners to provide alternate dwelling units to existing or prospective tenants because of the proximity of common household pets to a particular unit or the presence of such pets in the project.

§ 5.360 Housing programs: Additional lease provisions.

(a) *Inspections.* In addition to other inspections permitted under the lease, the leases for all Housing program tenants of projects for the elderly or persons with disabilities may state that the project owner may, after reasonable notice to the tenant and during reasonable hours, enter and inspect the premises. The lease shall permit entry and inspection only if the project owner has received a signed, written complaint alleging (or the project owner has reasonable grounds to believe) that the conduct or condition of a pet in the dwelling unit constitutes, under applicable State or local law, a nuisance or a threat to the health or safety of the occupants of the project or other persons in the community where the project is located.

(b) *Emergencies.* (1) If there is no State or local authority (or designated agent of such an authority) authorized under applicable State or local law to

remove a pet that becomes vicious, displays symptoms of severe illness, or demonstrates other behavior that constitutes an immediate threat to the health or safety of the tenancy as a whole, the project owner may place a provision in tenant leases permitting the project owner to enter the premises (if necessary), remove the pet, and take such action with respect to the pet as may be permissible under State and local law, which may include placing it in a facility that will provide care and shelter for a period not to exceed 30 days.

(2) The lease shall permit the project owner to enter the premises and remove the pet or take such other permissible action only if the project owner requests the pet owner to remove the pet from the project immediately, and the pet owner refuses to do so, or if the project owner is unable to contact the pet owner to make a removal request. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet. The cost of the animal care facility shall be paid as provided in § 5.363.

(3) The project owner may place a provision in tenant leases permitting the project owner to enter the premises, remove the pet, and place the pet in a facility that will provide care and shelter, in accordance with the provisions of § 5.363. The lease may not contain a provision relieving the project owner from liability for wrongful removal of a pet.

§ 5.363 Housing programs: Protection of the pet.

(a) If the health or safety of a pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet, the project owner may contact the responsible party or parties listed in the pet registration required under § 5.350(d)(1)(iii).

(b) If the responsible party or parties are unwilling or unable to care for the pet, or the project owner, despite reasonable efforts, has been unable to contact the responsible party or parties, the project owner may contact the appropriate State or local authority (or

designated agent of such an authority) and request the removal of the pet.

(c) If there is no State or local authority (or designated agent of such an authority) authorized to remove a pet under these circumstances and the project owner has placed a provision in the lease agreement (as described in § 5.360(c)(2)), the project owner may enter the pet owner's unit, remove the pet, and place the pet in a facility that will provide care and shelter until the pet owner or a representative of the pet owner is able to assume responsibility for the pet, but not longer than 30 days.

(d) The cost of the animal care facility provided under this section shall be borne by the pet owner. If the pet owner (or the pet owner's estate) is unable or unwilling to pay, the cost of the animal care facility may be paid from the pet deposit, if imposed under the pet rules.

PET OWNERSHIP REQUIREMENTS FOR
PUBLIC HOUSING PROGRAMS

§ 5.380 Public housing programs: Procedure for development of pet rules.

PHAs that choose to promulgate pet rules shall consult with tenants of projects for the elderly or persons with disabilities administered by them with respect to their promulgation and subsequent amendment. PHAs shall develop the specific procedures governing tenant consultation, but these procedures must be designed to give tenants (or, if appropriate, tenant councils) adequate opportunity to review and comment upon the pet rules before they are issued for effect. PHAs are solely responsible for the content of final pet rules, but must give consideration to tenant comments. PHAs shall send to the responsible HUD field office, copies of the final (or amended) pet rules, as well as summaries or copies of all tenant comments received in the course of the tenant consultation.

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

AUTHORITY: 42 U.S.C. 1437a and 3535(d).

§ 5.400

SOURCE: 61 FR 5665, Feb. 13, 1996, unless otherwise noted.

§ 5.400 Applicability.

This part applies to public housing and Section 8 programs.

[61 FR 5665, Feb. 13, 1996, as amended at 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, § 5.400 was amended after the words "public housing" by removing the phrase "(other than Indian housing under 24 CFR part 950)", effective Apr. 28, 2000.

§ 5.403 Definitions.

(a) The terms *displaced person*, *elderly person*, *low income family*, *near-elderly person*, *person with disabilities*, and *very low income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)). For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term "person with disabilities" means "individual with handicaps" as defined in 24 CFR 8.3.

(b) In addition to the terms listed in paragraph (a) of this section, the following definitions apply:

Annual contributions contract (ACC) means the written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

Applicant means a person or a family that has applied for housing assistance.

Disabled family means a family whose head, spouse, or sole member is a person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

Displaced family means a family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

Elderly family means a family whose head, spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living to-

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gether, or one or more persons who are at least 62 years of age living with one or more live-in aides.

Family includes but is not limited to:

(1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);

(2) An elderly family;

(3) A near-elderly family;

(4) A disabled family;

(5) A displaced family;

(6) The remaining member of a tenant family; and

(7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

(1) Is determined to be essential to the care and well-being of the persons;

(2) Is not obligated for the support of the persons; and

(3) Would not be living in the unit except to provide the necessary supportive services.

Near-elderly family means a family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

Person with disabilities:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. 6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

(3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

(4) Means "individual with handicaps", as defined in §8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

[61 FR 5665, Feb. 13, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 65 FR 16715, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16715, Mar. 29, 2000, §5.403 was amended by removing paragraph (a), by removing the introductory text of paragraph (b) along with the paragraph designation, by revising the definitions of "disabled family" and "elderly family", and by adding the definition of "person with disabilities", effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

* * * * *

§5.405 Basic eligibility; preference over single persons; and housing assistance limitation for single persons.

(a) *Basic eligibility.* An applicant must meet all of the eligibility requirements of the housing assistance for which an application is made in order to obtain the housing assistance. At a minimum, the applicant must be a family, and must be income-eligible. Eligible appli-

cants include single persons who are not elderly persons, or displaced persons, or persons with disabilities.

(b) *Preference over single persons.* An applicant that is a one- or two-person elderly, disabled or displaced family, must be given a preference over an applicant that is a single person who is not an elderly or displaced person, or a person with disabilities, regardless of the applicant's Federal or local preferences.

(c) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family may not be provided:

(1) For public housing and other project-based assistance, a housing unit with two or more bedrooms; or

(2) For tenant-based assistance, housing assistance for which the family unit size as determined by the HA subsidy standard exceeds the one bedroom level.

(d) This section shall not apply to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals set forth at 24 CFR part 882, subpart H.

[61 FR 5665, Feb. 13, 1996, as amended at 61 FR 13616, Mar. 27, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, §5.405 was removed, effective Apr. 28, 2000.

§5.410 Selection preferences.

(a) *Applicability.* The selection preferences that are described in this part are applicable to public housing and housing assisted under the Section 8 Housing Assistance Payments program. (Corresponding provisions applicable to the Indian housing program are found in 24 CFR part 950.) These preferences are administered by the entity responsible for admission functions in the programs covered ("responsible entity"), i.e., the public housing agency ("HA") in the public housing and Section 8 Certificate/Voucher and Moderate Rehabilitation programs and the owner in all other Section 8 programs.

(b) *Types of preference.* There are three types of admission preferences:

(1) "Federal preferences" are admission preferences for three categories of

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families, as prescribed in 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note. Federal preference is given for selection of families that are:

- (i) Involuntarily displaced;
- (ii) Living in substandard housing (including families that are homeless or living in a shelter for the homeless); or
- (iii) Paying more than 50 percent of family income for rent.

(2) "Ranking preferences" are preferences that may be established by the responsible entity to use in selecting among applicants that qualify for federal preferences.

(3) "Local preferences" are preferences for use in selecting among applicants without regard to their federal preference status. (See 42 U.S.C. 1437d(c)(4)(A), 1437f(d)(1)(A), 1437f(o)(3), and 1437f note.)

(c) *System.* In the Section 8 programs other than the Certificate/Voucher and Moderate Rehabilitation programs, the owner must establish a system for selection of applicants from the waiting list that includes the following:

- (1) How the federal preferences will be used;
- (2) How any ranking preferences will be used;
- (3) How any local preferences will be used; and
- (4) How any residency preference will be used.

(d) *Use of preference in selection process—(1) Factors other than federal and local preferences—(i) Characteristics of the unit.* For developments administered under the Section 8 programs and for public housing, the responsible entity may, in selecting a family for a particular unit, match other characteristics of the applicant family with the type of unit available, e.g., number of bedrooms. In selection of a family for a unit that has special accessibility features, the responsible entity must give preference to families that include persons with disabilities who can benefit from those features of the unit (see 24 CFR 8.27 and 24 CFR 100.202(c)(3)). Also, in selection of a family for a unit in a mixed population project, the responsible entity will give preference to elderly families and disabled families (see subpart D of part 960 or §880.612a or §881.612a of this title).

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(ii) *Singles preference.* See §5.405.

(2) *Local preference admissions.* (i) Local preferences may be adopted or amended by an HA to respond to local housing needs and priorities after the HA has conducted a public hearing.

(ii) For Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs operated under 24 CFR part 982, 983, and 882, respectively, if the owner wants to use preferences to select among applicants without regard to their federal preference status, it must use the local preference system adopted for use in the Section 8 Certificate/Voucher programs by the housing agency for the jurisdiction. If there is more than one HA for the jurisdiction, the owner shall use the local preference system of the HA for the lowest level of government that has jurisdiction where the project is located. For the public housing program, the HA may use a local preference system it adopts for that program.

(iii) In the Section 8 programs other than the Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs operated under 24 CFR parts 982, 983 and 882, respectively, before an owner implements the HA's local preferences, the owner must receive approval from the HUD Field Office. HUD shall review these preferences to ensure that they are applicable to any tenant eligibility limitations for the subject housing and that they are consistent with HUD requirements pertaining to nondiscrimination and the Affirmative Fair Housing Marketing objectives. If HUD determines that the local preferences are in violation of those requirements, the owner will not be permitted to admit applicants on the basis of any local preferences.

(iv) In any year, the number of families given preference in admission pursuant to a local preference over families with a federal preference may not exceed the local preference limit. "Local preference limit" means the following:

(A) For an HA's Section 8 Certificate/Voucher program operated under 24 CFR part 982, ten percent of annual waiting list admissions;

(B) For an HA's public housing program, fifty percent of annual admissions;

(C) For an HA's Section 8 Moderate Rehabilitation program, thirty percent of annual admissions;

(D) For Section 8 New Construction, Substantial Rehabilitation, and Loan Management/Property Disposition projects, thirty percent of annual admissions to each project; and

(E) For the Section 8 Project-Based Certificate program, thirty percent of total annual waiting list admissions to the HA's Project-Based Certificate program (including admissions pursuant to 24 CFR 983.203(c)(3)).

(3) *Prohibition of preference if applicant was evicted for drug-related criminal activity.* With respect to the Section 8 Certificate, Voucher, Loan Management, and Property Disposition programs and the public housing program, the HA may not give a preference (federal preference, local preference, or ranking preference) to an applicant if any member of the family is a person who was evicted during the past three years from housing assisted under a 1937 Housing Act program because of drug-related criminal activity. However, the HA may give an admission preference in any of the following cases:

(i) If the HA determines that the evicted person has successfully completed a rehabilitation program approved by the HA;

(ii) If the HA determines that the evicted person clearly did not participate in or know about the drug-related criminal activity; or

(iii) If the HA determines that the evicted person no longer participates in any drug-related criminal activity.

(4) *Retention of federal preference status.* With respect to determining the preference status of an applicant for the Section 8 Certificate/Voucher programs, an applicant who is receiving tenant-based assistance under the HOME program (24 CFR part 92) and an applicant who resides in public or Indian housing of the same HA (and was on the tenant-based program waiting list when admitted to the HA's public or Indian housing on or after April 26, 1993), the HA determines whether the applicant qualifies for federal pref-

erence based on the situation of the applicant at the time the applicant began to receive tenant-based assistance under the HOME program or was admitted to the HA's public or Indian housing program (beginning of initial public or Indian housing lease).

(e) *Income-based admission.* (1) In public housing, the HA may only give preference to select a relatively higher income family for admission if the preference is pursuant to a "local preference" admission. (For other income-related restrictions on selection, see 24 CFR 913.105.)

(2) In Section 8 programs, the responsible entity may not select a family for admission in an order different from the order on the waiting list for the purpose of selecting a relatively higher income family for admission.

(f) *Informing applicants about admission preferences.* (1) The responsible entity must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences (federal preference, ranking preference, or local preference).

(2) If the responsible entity determines that the notification to all applicants on a waiting list required by paragraph (f)(1) of this section is impracticable because of the length of the list, the responsible entity may provide this notification to fewer than all applicants on the list at any given time. The responsible entity must, however, have notified a sufficient number of applicants at any given time that, on the basis of the entity's determination of the number of applicants on the waiting list who already claim a federal preference and the anticipated number of project admissions:

(i) There is an adequate pool of applicants who are likely to qualify for a federal preference; and

(ii) It is unlikely that, on the basis of the responsible entity's framework for applying the preferences under paragraph (c) of this section and the federal preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(g) *Notice and opportunity for a meeting where preference is denied.* (1) If the

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responsible entity determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the responsible entity must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the responsible entity to review the determination. The meeting may be conducted by any person or persons designated by the responsible entity, who may be an officer or employee of the responsible entity, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(h) *Residency preferences.* A “residency preference” is a preference for admission of families that reside anywhere in a specified “residency preference area.” A residency preference may be used as a ranking or local preference.

(1) *Section 8 programs other than Certificate/Voucher and Project-Based Certificate.* In these developments, local residency requirements are prohibited.

(2) *Section 8 Certificate/Voucher and Project-Based Certificate programs.* Any residency preference must be approved by HUD.

(i) A county or municipality may be used as a residency preference area.

(ii) An area smaller than a county or municipality may not be used as a residency preference area.

(3) *All projects.* With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the residency preference area shall be treated as residents of the residency preference area. A residency preference may not be based on how long the applicant has resided in or worked in the residency preference area.

(i) *Nondiscrimination.* (1) Any selection preferences must be established and administered in accordance with the following authorities:

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(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101-12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD’s affirmative fair housing objectives and (where applicable) the owner’s HUD-approved affirmative fair housing marketing plan.

(Approved by the Office of Management and Budget under OMB control numbers 2577-0105 and 2502-0372)

[61 FR 9041, Mar. 6, 1996, as amended at 62 FR 27125, May 16, 1997]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, §5.410 was removed, effective Apr. 28, 2000.

§5.415 Federal preferences: General.

(a) *Definitions.* The definitions of these preference categories stated in §§5.420, 5.425, and 5.430 must be used by the responsible entity, except that an HA may use its own alternative definitions if they have been approved by HUD.

(b) *Ranking preferences: selection among federal preference holders.* The responsible entity’s system of administering the federal preferences (its admission policy, in the case of the Section 8 Certificate/Voucher programs) may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The responsible entity may give preference to working families—so long as the prohibition of §5.410 against selection based on income and the nondiscrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If a

responsible entity adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A responsible entity may give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The responsible entity also may use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The ranking preferences may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular category of federal preference; or

(iii) Giving greater weight to a federal preference holder who fits a particular category of federal preference.

(c) *Qualifying for a federal preference—*
(1) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the responsible entity that the family qualifies for federal preference. The responsible entity must accept this certification, unless the responsible entity verifies that the applicant is not qualified for federal preference.

(2) *Verification of preference.* (i) Before admitting an applicant on the basis of a federal preference, the responsible entity must require the applicant to provide information needed by the responsible entity to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) In the case of Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs, the owner must use the verification procedures specified in §5.420(c) (involuntary displacement); §5.425(c) (substandard housing); and §5.430(b) (rent burden). In the case of the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program, the HA may adopt its own verification procedure.

(iii) Once the responsible entity has verified an applicant's qualification for a federal preference, the responsible entity need not require the applicant to provide information needed by the responsible entity to verify such qualification again unless:

(A) The responsible entity determines reverification is desirable because a long time has passed since verification; or

(B) The responsible entity has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(3) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* With respect to Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate and Moderate Rehabilitation programs, HUD may specify additional conditions under which the federal preferences, as described in §§5.420, 5.425, and 5.430, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502-0372 and 2577-0105)

[61 FR 9043, Mar. 6, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, §5.415 was removed, effective Apr. 28, 2000.

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§ 5.420 Federal preference: Involuntary displacement.

(a) *How applicant qualifies for displacement preference.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)

(1) An applicant qualifies for a federal preference on the basis of involuntary displacement if either of the following apply:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing; or

(ii) The applicant will be involuntarily displaced within no more than six months from the date of preference status certification by the family or verification by the responsible entity.

(2)(i) "Standard, permanent replacement housing" is housing:

(A) That is decent, safe, and sanitary;

(B) That is adequate for the family size; and

(C) That the family is occupying pursuant to a lease or occupancy agreement.

(ii) "Standard, permanent replacement housing" does not include:

(A) Transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families; or

(B) In the case of domestic violence, the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(b) *Meaning of involuntary displacement.* An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate the unit where the applicant lives because of one or more of the following:

(1) *Displacement by disaster.* An applicant's unit is uninhabitable because of a disaster, such as a fire or flood.

(2) *Displacement by government action.* Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by action of housing owner.* (i) Action by a housing owner forces the applicant to vacate its unit.

(ii) An applicant does not qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit unless:

(A) The applicant cannot control or prevent the owner's action;

(B) The owner action occurs although the applicant met all previously imposed conditions of occupancy; and

(C) The action taken by the owner is other than a rent increase.

(iii) To qualify as involuntarily displaced because action by a housing owner forces the applicant to vacate its unit, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closing of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that the applicant must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market.

(iv) Such reasons do not include the vacating of a unit by a tenant as a result of actions taken by the owner because the tenant refuses:

(A) To comply with HUD program policies and procedures for the occupancy of under-occupied or overcrowded units; or

(B) To accept a transfer to another housing unit in accordance with a court decree or in accordance with policies and procedures under a HUD-approved desegregation plan.

(4) *Displacement by domestic violence.* (i) An applicant is involuntarily displaced if:

(A) The applicant has vacated a housing unit because of domestic violence; or

(B) The applicant lives in a housing unit with a person who engages in domestic violence.

(ii) "Domestic violence" means actual or threatened physical violence directed against one or more members of the applicant family by a spouse or other member of the applicant's household.

(iii) To qualify as involuntarily displaced because of domestic violence:

(A) The responsible entity must determine, in accordance with HUD's administrative instructions, that the domestic violence occurred recently or is of a continuing nature; and

(B) The applicant must certify that the person who engaged in such violence will not reside with the applicant family unless the responsible entity has given advance written approval. If the family is admitted, the responsible entity may deny or terminate assistance to the family for breach of this certification.

(5) *Displacement to avoid reprisals.* (i) An applicant family is involuntarily displaced if:

(A) Family members provided information on criminal activities to a law enforcement agency; and

(B) Based on a threat assessment, a law enforcement agency recommends rehousing the family to avoid or minimize a risk of violence against family members as a reprisal for providing such information.

(ii) The responsible entity may establish appropriate safeguards to conceal the identity of families requiring protection against such reprisals.

(6) *Displacement by hate crimes.* (i) An applicant is involuntarily displaced if:

(A) One or more members of the applicant's family have been the victim of one or more hate crimes; and

(B) The applicant has vacated a housing unit because of such crime, or the fear associated with such crime has destroyed the applicant's peaceful enjoyment of the unit.

(ii) "Hate crime" means actual or threatened physical violence or intimidation that is directed against a person or his or her property and that is based on the person's race, color, religion, sex, national origin, handicap, or familial status.

(iii) The responsible entity must determine, in accordance with HUD's administrative instructions, that the

hate crime involved occurred recently or is of a continuing nature.

(7) *Displacement by inaccessibility of unit.* An applicant is involuntarily displaced if:

(i) A member of the family has a mobility or other impairment that makes the person unable to use critical elements of the unit; and

(ii) The owner is not legally obligated to make the changes to the unit that would make critical elements accessible to the disabled person as a reasonable accommodation.

(8) *Displacement because of HUD disposition of multifamily project.* Involuntary displacement includes displacement because of disposition of a multifamily rental housing project by HUD under section 203 of the Housing and Community Development Amendments of 1978.

(c) *Involuntary displacement preference: Verification.* A private owner's verification of an applicant's involuntary displacement is established by the following documentation:

(1) *Displacement by disaster.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster that results in the uninhabitability of an applicant's unit.

(2) *Displacement by government action.* Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program.

(3) *Displacement by owner action.* Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to or will have to vacate a unit by a date certain because of owner action.

(4) *Displacement because of domestic violence.* Certification, in a form prescribed by the Secretary, of displacement because of domestic violence from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility

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that provides shelter or counseling to the victims of domestic violence.

(5) *Displacement to avoid reprisals.* A threat assessment by a law enforcement agency.

(6) *Displacement by hate crime.* Certification by a law enforcement agency or other reliable information.

(7) *Displacement by inaccessibility of unit.* Certification by a health care professional that a family member has a mobility or other impairment that makes critical elements of the current unit inaccessible, and statement by the owner that it is unable to make necessary changes to the unit to make it accessible.

(8) *Displacement by HUD disposition of multifamily project.* Certification by HUD with respect to the disposition.

[61 FR 9044, Mar. 6, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.420 was removed, effective Apr. 28, 2000.

§ 5.425 Federal preference: Substandard housing.

(a) *When unit is substandard.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, Moderate Rehabilitation programs and the public housing program.) A unit is substandard if it:

- (1) Is dilapidated;
- (2) Does not have operable indoor plumbing;
- (3) Does not have a usable flush toilet inside the unit for the exclusive use of a family;
- (4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;
- (5) Does not have electricity, or has inadequate or unsafe electrical service;
- (6) Does not have a safe or adequate source of heat;
- (7) Should, but does not, have a kitchen; or
- (8) Has been declared unfit for habitation by an agency or unit of government.

(b) *Other definitions—(1) Dilapidated unit.* A housing unit is dilapidated if:

- (i) The unit does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family; or

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(ii) The unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(2) *Homeless family.* (i) An applicant that is a “homeless family” is considered to be living in substandard housing.

(ii) A “homeless family” includes:

(A) Any person or family that lacks a fixed, regular, and adequate nighttime residence; and

(B) Any person or family that has a primary nighttime residence that is:

(1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(2) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(iii) A “homeless family” does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a State law.

(3) *Status of SRO housing.* In determining whether an individual living in single room occupancy (SRO) housing qualifies for federal preference, SRO housing is not considered substandard solely because it does not contain sanitary or food preparation facilities.

(c) *Substandard housing preference: verification.* The following provisions are applicable to private owners:

(1) Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant’s present landlord that the applicant’s unit is “substandard housing” (as described in this section).

(2) In the case of a “homeless family” (as described in this section), verification consists of certification, in a form prescribed by the Secretary, of

this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

[61 FR 9045, Mar. 6, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.425 was removed, effective Apr. 28, 2000.

§ 5.430 Federal preference: Rent burden.

(a) *Rent burden preference: how determined.* (See § 5.415(a)(2) and (c)(2)(ii) for applicability of this section to the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program.)

(1) "Rent burden preference" means the federal preference for admission of applicants that pay more than 50 percent of family income for rent.

(2) For purposes of determining whether an applicant qualifies for the rent burden preference:

(i) "Family income" means Monthly Income, as defined in 24 CFR 813.102.

(ii) "Rent" means:

(A) The actual monthly amount due under a lease or occupancy agreement between a family and the family's current landlord; and

(B) For utilities purchased directly by tenants from utility providers:

(1) The utility allowance for family-purchased utilities and services that is used in the HA tenant-based program; or

(2) If the family chooses, the average monthly payments that the family actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(iii) Amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(iv) For purposes of the Section 8 Certificate/Voucher programs, rent for an applicant who owns a manufactured home, but rents the space upon which it is located, includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements. In addition, for this program, rent for members of a

cooperative means the charges under the occupancy agreement between the members and the cooperative.

(3) An applicant does not qualify for a rent burden preference if either of the following is applicable:

(i) The applicant has been paying more than 50 percent of income for rent for less than 90 days.

(ii) The applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance for occupancy of the unit under any of the following programs has been terminated because of the applicant's refusal to comply with applicable program policies and procedures on the occupancy of underoccupied and overcrowded units:

(A) The Section 8 programs or public and Indian housing programs under the United States Housing Act of 1937;

(B) The rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or

(C) Rental assistance payments under section 236(f)(2) of the National Housing Act.

(b) *Rent burden preference: verification of income and rent.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) *How to verify income.* The owner must verify a family's income by using the standards and procedures that it uses to verify family income under 24 CFR part 813.

(2) *How to verify rent.* The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement:

(i) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement; or

(ii) By contacting the landlord (or cooperative) or its agent directly.

(3) *Utilities.* To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts,

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or must obtain the information directly from the utility or service supplier.

[61 FR 9045, Mar. 6, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.430 was removed, effective Apr. 28, 2000.

Subpart E—Restrictions on Assistance to Noncitizens

AUTHORITY: 42 U.S.C. 1436a and 3535(d).

§ 5.500 Applicability.

(a) *Covered programs/assistance.* This subpart E implements Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 prohibits HUD from making financial assistance available to persons who are not in eligible status with respect to citizenship or non-citizen immigration status. This subpart E is applicable to financial assistance provided under:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program);

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program); and

(4) The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) which covers:

- (i) HUD's Public Housing Programs;
- (ii) The Section 8 Housing Assistance Programs; and
- (iii) The Housing Development Grant Programs (with respect to low income units only).

(b) *Covered individuals and entities—(1) Covered individuals/persons and families.* The provisions of this subpart E apply to both applicants for assistance and persons already receiving assistance covered under this subpart E.

(2) *Covered entities.* The provisions of this subpart E apply to Public Housing Agencies (PHAs), project (or housing) owners, and mortgagees under the Section 235 Program. The term "responsible entity" is used in this subpart E

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to refer collectively to these entities, and is further defined in § 5.504.

§ 5.502 Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart E requires the responsible entity to provide to an individual, or requires the responsible entity to obtain the signature of an individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 5.504 Definitions.

(a) The definitions *1937 Act*, *HUD*, *Public Housing Agency (PHA)*, and *Section 8* are defined in subpart A of this part.

(b) As used in this subpart E:

Child means a member of the family other than the family head or spouse who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 5.508(b).)

Family has the same meaning as provided in the program regulations of the relevant Section 214 covered program.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing covered programs means the following programs administered by the Assistant Secretary for Housing:

(1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program);

(2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and

(3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program).

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor national of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit.

Public Housing covered programs means the public housing programs administered by the Assistant Secretary for Public and Indian Housing under title I of the 1937 Act. This definition does not encompass HUD's Indian Housing programs administered under title II of the 1937 Act. Further, this term does not include those programs providing assistance under section 8 of the 1937 Act. (See definition of "Section 8 Covered Programs" in this section.)

Responsible entity means the person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status. The entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status under the various covered programs is as follows:

(1) For the Section 235 Program, the mortgagee.

(2) For Public Housing, the Section 8 Rental Certificate, the Section 8 Rental Voucher, and the Section 8 Moderate Rehabilitation programs, the PHA administering the program under an ACC with HUD.

(3) For all other Section 8 programs, the Section 236 Program, and the Rent Supplement Program, the owner.

Section 8 covered programs means all HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8-assisted housing for which loans are made under section 202 of the Housing Act of 1959.

Section 214 means section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in § 5.500.

Tenant means an individual or a family renting or occupying an assisted dwelling unit. For purposes of this subpart E, the term tenant will also be used to include a homebuyer, where appropriate.

§ 5.506 General provisions.

(a) *Restrictions on assistance.* Financial assistance under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status under one of the categories set forth in Section 214 (see 42 U.S.C. 1436a(a)).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section, or unless the family meets the conditions set forth in paragraph (b)(2) of this section.

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in §§ 5.516 and 5.518. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in §§ 5.516 and 5.518.

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

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the

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family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of §§ 5.516 and 5.518 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity.

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) One of the INS documents referred to in § 5.510; and

(iii) A signed verification consent form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *For Housing covered programs:* The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

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(d) *Verification consent form—(1) Who signs.* Each noncitizen who declares eligible immigration status (except certain noncitizens who are 62 years of age or older as described in paragraph (b)(2) of this section) must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 5.516 and 5.518, or § 5.520, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify in writing to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214—(1) When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible

immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995, shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to tenants.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the responsible entity's notice of regular re-examination of income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section and any additional requirements imposed under the Section 235 Program.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 5.514 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of §§ 5.516 and 5.518.

(g) *When evidence of eligible status is required to be submitted.* The responsible entity shall require evidence of eligible status to be submitted at the times

specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, responsible entities must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 5.512(a)).

(2) *Tenants.* For tenants, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance under a Section 214 covered program, with the exception of Section 235 assistance payments, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with requirements imposed under the Section 235 Program.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the responsible entity for a Section 214 covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any Section 214 covered program.

(h) *Extensions of time to submit evidence of eligible status—(1) When extension must be granted.* The responsible entity shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

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(i) Submits the declaration required under § 5.508(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 5.514, 5.516, and 5.518.

(ii) [Reserved]

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60538, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

§ 5.510 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The re-

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sponsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

§ 5.512 Verification of eligible immigration status.

(a) *General.* Except as described in paragraph (b) of this section and § 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

(c) *Primary verification—(1) Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(d) *Secondary verification—(1) Manual search of INS records.* Secondary verification is a manual search by the

INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a Section 214 covered program.

(2) *Secondary verification initiated by responsible entity.* Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents required for the immigration status declared (front and back), attached to the INS document verification request form G-845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G-845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in §5.514(d), which includes notification of the right to appeal to the INS of the INS finding on immigration status (see §5.514(d)(4)).

(e) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

§5.514 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.* (1) *Restrictions on reduction, denial or termination of assistance for applicants and tenants.* Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of

ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under §5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with §5.520; or

(vi) Assistance for a mixed family is continued in accordance with §§5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with §§5.516 and 5.518.

(2) *Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants.* In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) *Events causing denial or termination of assistance.* (1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in §5.508(g) or by the expiration of any extension granted in accordance with §5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal

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or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

(2) *Termination of assisted occupancy.* For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under §5.520;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families in §§5.514 and 5.518;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status,

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the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G-845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) *Decision by INS—(i) When decision will be issued.* The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and responsible entity of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS,

the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

(2) *Informal hearing procedures*—(i) *Tenants assisted under a Section 8 covered program*: For tenants assisted under a Section 8 covered program, the procedures for the hearing before the responsible entity are set forth in:

(A) *For Section 8 Moderate Rehabilitation assistance*: 24 CFR part 882;

(B) *For Section 8 tenant-based assistance*: 24 CFR part 982; or

(C) *For Section 8 project-based certificate program*: 24 CFR part 983.

(ii) *Tenants assisted under any other Section 8 covered program or a Public Housing covered program*: For tenants assisted under a Section 8 covered program not listed in paragraph (f)(3)(i) of this section or a Public Housing covered program, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(iii) *Families under Housing covered programs and applicants for assistance under all covered programs*. For all families under Housing covered programs (applicants as well as tenants already receiving assistance) and for applicants for assistance under all covered programs, the procedures for the informal hearing before the responsible entity are as follows:

(A) *Hearing before an impartial individual*. The family shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence*. The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), in-

cluding any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status*. The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the responsible entity*. The family shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) *Representation*. The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(F) *Interpretive services*. The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or responsible entity, as may be agreed upon by the two parties to the proceeding; and

(G) *Hearing to be recorded*. The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the responsible entity).

(3) *Hearing decision*. The responsible entity shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief*. A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents*. The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

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(1) The application for financial assistance;

(2) The form completed by the family for income reexamination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final informal hearing decision.

(i) *Termination of assisted occupancy.*

(1) Under Housing covered programs, and in the Section 8 covered programs other than the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the responsible entity notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The responsible entity and tenant entering into a new lease without financial assistance.

(iii) The responsible entity evicting the tenant. While the tenant continues in occupancy of the unit, the responsible entity may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the responsible entity to terminate the tenancy and to evict the tenant must be in accordance with applicable HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating

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assistance payments. (See provisions of this section concerning termination of assistance.) The PHA shall not make any additional assistance payments to the owner after the required procedures specified in this section have been completed. In addition, the PHA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25731, May 12, 1999]

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

(a) *Assistance available for tenant mixed families—(1) General.* Preservation assistance is available to tenant mixed families, following completion of the appeals and informal hearing procedures provided in §5.514. There are three types of preservation assistance:

(i) Continued assistance (see paragraph (a) of §5.518);

(ii) Temporary deferral of termination of assistance (see paragraph (b) of §5.518); or

(iii) Prorated assistance (see §5.520, a mixed family must be provided prorated assistance if the family so requests).

(2) *Availability of assistance—(i) For Housing covered programs:* One of the three types of assistance described is available to tenant mixed families assisted under a National Housing Act or 1965 HUD Act covered program, depending upon the family's eligibility for such assistance. Continued assistance must be provided to a mixed family that meets the conditions for eligibility for continued assistance.

(ii) *For Section 8 or Public Housing covered programs.* One of the three types of assistance described may be available to tenant mixed families assisted under a Section 8 or Public Housing covered program.

(b) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in §5.520.

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be

available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

(1) *For Housing covered programs:* Temporary deferral of termination of assistance is available to families assisted under a Housing covered program.

(2) *For Section 8 or Public Housing covered programs:* The responsible entity may make temporary deferral of termination of assistance to families assisted under a Section 8 or Public Housing covered program.

(d) *Section 8 covered programs: Discretion afforded to provide certain family preservation assistance—(1) Project owners.* With respect to assistance under a Section 8 Act covered program administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance to a family. However, project owners and PHAs must offer prorated assistance to eligible mixed families.

(2) *PHAs.* The PHA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The PHA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the PHA must incorporate the statutory criteria, which are set forth in paragraphs (a) and (b) of §5.518. However, the PHA must offer prorated assistance to eligible families.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25732, May 12, 1999]

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

(a) *Continued assistance.* (1) *General.* A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in §5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) *Proration of continued assistance.* A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in §5.520.

(b) *Temporary deferral of termination of assistance—(1) Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

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(2) *Housing covered programs: Conditions for granting temporary deferral of termination of assistance.* The responsible entity shall grant a temporary deferral of termination of assistance to a mixed family if the family is assisted under a Housing covered program and one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral

period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

(c) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the responsible entity shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(d) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25732, May 12, 1999]

§ 5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) *Method of prorating assistance for Housing covered programs—(1) Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of

which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) *Method of prorating assistance for Section 8 covered programs—(1) Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent

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plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) *Step 3.* Subtract amount determined in paragraph (c)(1)(ii), (Step 2), from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) *Step 4.* Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Assistance for a Section 8 voucher tenancy or over-FMR tenancy.* For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the housing assistance payment

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does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public housing maximum rent" applicable to the unit or the PHA. (This "maximum rent" shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(4) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(5) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 64 FR 13056, Mar. 16, 1999]

§ 5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of

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a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children accompanying the student or following to join the student.

(2) The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 5.524 Compliance with non-discrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations in 24 CFR part 100.

§ 5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C. 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

[64 FR 25732, May 12, 1999]

§ 5.528 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented eligible status, the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

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

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

SOURCE: 61 FR 54498, Oct. 18, 1996, unless otherwise noted.

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on these subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 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;

(3) Owner reexamination of family income and composition.

[65 FR 16716, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.601 was revised, effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

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§ 5.601 Purpose and applicability.

(a) This subpart establishes definitions and requirements concerning income limits for admission, annual income, adjusted income, total tenant payment, utility allowances and reimbursements, and reexamination of income and family composition for:

(1) HUD's public housing programs, including its public housing homeownership programs.

(2) Housing assisted under section 8 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437f).

(i) Section 5.613 (Total tenant payment) and the definitions of "tenant rent" and "total tenant payment" found in § 5.603 do not apply to the Section 8 Rental Voucher Program.

(ii) Section 5.615 (Utility reimbursement) and the definition of *utility reimbursement* found in § 5.603 also do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

(iii) Section 5.607 (Income limits for admission) does not apply to the Section 8 Rental Voucher and Rental Certificate Programs.

(3) Applicants and tenants assisted under sections 10(c) and 23 of the 1937 Act as in effect before amendment by the Housing and Community Development Act of 1974 (42 U.S.C. 1410 and 1421b (1970 ed.)).

(b) This subpart does not apply to HUD's Indian housing programs. The analogous rule that applies to Indian housing is located at 24 CFR part 950.

§ 5.603 Definitions.

As used in this subpart:

(a) *Terms found elsewhere in part 5—(1) Subpart A.* The terms *1937 Act*, *elderly person*, *public housing*, *public housing agency* (PHA), and *Section 8* are defined in § 5.100.

(2) *Subpart D.* The terms "disabled family", "elderly family", "family", "live-in aide", and "person with disabilities" are defined in § 5.403.

(b) The following terms shall have the meanings set forth below:

Adjusted income. See § 5.611.

Annual income. See § 5.609.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent

such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Disability assistance expenses. Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Economic self-sufficiency program. Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low income family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Full-time student. A person who is attending school or vocational training on a full-time basis.

Imputed welfare income. See § 5.615.

Low income family. A family whose annual income does not exceed 80 percent of the median income for the area,

as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

Medical expenses. Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Net family assets. (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under § 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Owner has the meaning provided in the relevant program regulations. As used in this subpart, where appro-

priate, the term "owner" shall also include a "borrower" as defined in part 891 of this title.

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

Total tenant payment. See § 5.613.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family. A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by Federal, State or local governments.

Work activities. See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.603 was amended by revising paragraph (a), by removing paragraphs (b) and (c), and by redesignating paragraph (d) as paragraph (b); newly designated paragraph (b) was amended by revising the definitions

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of "full-time student", "tenant rent", and "utility reimbursement", and by adding definitions of "economic self-sufficiency program", "extremely low income family", "imputed welfare income", "low income family", "very low income family", and "work activities", and in the definition of "owner", by removing the phrase "24 CFR part 885" and replacing it with "part 891 of this title", effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.603 Definitions.

* * * * *

(a) The terms *elderly person*, *low-income family*, *person with disabilities*, *State*, and *very low-income family* are defined in section 3(b) of the 1937 Act (42 U.S.C. 1437a(b)).

(b) The terms *1937 Act* and *public housing agency (PHA)* are defined in § 5.100.

(c) The terms *disabled family*, *elderly family*, *family*, and *live-in aide* are defined in § 5.403.

* * * * *

Full-time student. A person who is carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

* * * * *

Tenant rent. The amount payable monthly by the family as rent to the PHA or owner, as applicable. Where all utilities (except telephone) and other essential housing services are supplied by the PHA or owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone) and other essential housing services are supplied by the PHA or owner and the cost thereof is not included in the amount paid as rent, tenant rent equals total tenant payment less the utility allowance.

* * * * *

Utility reimbursement. The amount, if any, by which the utility allowance for the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

§ 5.605 Overall income eligibility for assistance.

No family other than a low-income family shall be eligible for admission to a program covered by this part.

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EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.605 was removed, effective Apr. 28, 2000.

§ 5.607 Income limits for admission.

(a) *General*—(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the dwelling units that were available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts taking effect before October 1, 1981 and that are leased on or after that date shall be available for leasing by low-income families other than very low-income families. HUD reserves the right to limit the admission of low-income families other than very low-income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the dwelling units that initially become available for occupancy under Annual Contributions Contracts (ACC) and Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low-income families other than very low-income families. Except with the prior approval of HUD under paragraphs (b) and (c) of this section, no low-income family, other than a very low-income family shall be admitted to these units.

(b) *Request for exception.* A request by a PHA or owner for approval of admission of low-income families other than very low-income families to units described in paragraph (a)(2) of this section must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(1) *For Section 8 Programs.* (i) Low-income families that would otherwise be displaced from Section 8 Substantial Rehabilitation or Moderate Rehabilitation projects;

(ii) Low-income families that are displaced as a result of Rental Rehabilitation or Development activities assisted under section 17 of the 1937 Act (42 U.S.C. 1437o), or as a result of activities under the Rental Rehabilitation Demonstration Program;

(iii) Need for admission of a broader range of tenants to preserve the financial or management viability of a

project because there is an insufficient number of potential applicants who are very low-income families;

(iv) Commitment of an owner to attaining occupancy by families with a broad range of incomes, as evidenced in the application for development. An application citing this basis should be supported by evidence that the owner is pursuing this goal throughout its assisted projects in the community; and

(v) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes, supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103).

(2) *For public housing only.* (i) Need for admission of a broader range of tenants to obtain full occupancy;

(ii) Local commitment to attaining occupancy by families with a broad range of incomes. An application citing this basis should be supported by evidence that the PHA is pursuing this goal throughout its housing program in the community;

(iii) Need for higher incomes to sustain homeownership eligibility in a homeownership project; and

(iv) Need to avoid displacing low-income families from a project acquired by the PHA for rehabilitation.

(c) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's sole discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners and PHAs at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(d) *Reporting.* PHAs and owners shall comply with HUD-prescribed reporting

requirements that will permit HUD to maintain the reasonably current data necessary to monitor compliance with the income eligibility restrictions described in paragraph (a) of this section.

(e) *Inapplicability to certain scattered site housing.* The income eligibility restrictions described in paragraph (a) of this section do not apply to scattered site public housing dwelling units sold or intended to be sold to public housing tenants under section 5(h) of the 1937 Act (42 U.S.C. 1437c(h)).

(f) *Inapplicability to the Section 8 Rental Voucher and Rental Certificate Programs.* The provisions of this section do not apply to the Section 8 Rental Voucher and Section 8 Rental Certificate Programs.

(Approved by the Office of Management and Budget under Control number 2502-0204.)

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.607 was removed, effective Apr. 28, 2000.

FAMILY INCOME

§ 5.609 Annual income.

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

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

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

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

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

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a

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business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) *Welfare assistance.* If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(i) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(ii) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(6)(ii) shall be the amount resulting from one application of the percentage;

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) *For public housing only:* (i) The earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, section 22 of the 1937 Act

(42 U.S.C. 1437t), or any comparable Federal, State, or local law during the exclusion period.

(ii) For purposes of this paragraph, the following definitions apply:

(A) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(1) Is authorized by a Federal, State or local law;

(2) Is funded by the Federal, State or local government;

(3) Is operated or administered by a public agency; and

(4) Has as its objective to assist participants in acquiring employment skills.

(B) *Exclusion period* means the period during which the family member participates in a program described in this section, plus 18 months from the date the family member begins the first job acquired by the family member after completion of such program that is not funded by public housing assistance under the 1937 Act. If the family member is terminated from employment with good cause, the exclusion period shall end.

(C) *Earnings and benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the FEDERAL REGISTER

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and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

(e) If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period may be annualized, subject to a redetermination at the end of the shorter period.

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, §5.609 was amended by removing and reserving paragraph (c)(13), by revising paragraphs (c)(8)(iv) and (d), and by removing paragraph (e), effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§5.609 Annual income.

* * * * *

(c) * * * *

(8) * * * *

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

* * * * *

(d) *For public housing only.* In addition to the exclusions from annual income covered in paragraph (c) of this section, a PHA may adopt additional exclusions for earned income pursuant to an established written policy.

(1) In establishing such a policy, a PHA must adopt one or more of the following types of earned income exclusions, including variations thereof:

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(i) Exclude all or part of the family's earned income;

(ii) Apply the exclusion only to new sources of earned income or only to increases in earned income;

(iii) Apply the exclusion to the earned income of the head, the spouse, or any other family member age 18 or older;

(iv) Apply the exclusion only to the earned income of persons other than the primary earner;

(v) Apply the exclusion to applicants, newly admitted families, existing tenants, or persons joining the family;

(vi) Make the exclusion temporary or permanent, for the PHA, the family, or the affected family member;

(vii) Make the exclusion graduated, so that more earned income is excluded at first and less earned income is excluded after a period of time;

(viii) Exclude any or all of the costs that are incurred in order to go to work but are not compensated, such as the cost of special tools, equipment, or clothing;

(ix) Exclude any or all of the costs that result from earning income, such as social security taxes or other items that are withheld in payroll deductions;

(x) Exclude any portion of the earned income that is not available to meet the family's own needs, such as amounts that are paid to someone outside the family for alimony or child support; and

(xi) Exclude any portion of the earned income that is necessary to replace benefits lost because a family member becomes employed, such as amounts that the family pays for medical costs or to obtain medical insurance.

(2) Any amounts that are excluded from annual income under this paragraph (d) may not also be deducted in determining adjusted income, as defined in §5.611.

(3) Housing agencies do not need HUD approval to adopt optional earned income exclusions.

(4) In the calculation of Performance Funding System operating subsidy eligibility, housing agencies will have to absorb any loss in rental income that results from the adoption of any of the optional earned income exclusions discussed in paragraph (d)(1) of this section, including any variations of the listed options.

* * * * *

§5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity) 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, but this allowance may not exceed the earned income received by family members who are 18 years of age or older 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) *Permissive deductions—for public housing only.* For public housing only, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

[65 FR 16717, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16717, Mar. 29, 2000, §5.611 was revised, effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.611 Adjusted income.

Adjusted income means annual income less the following deductions:

- (a) \$480 for each dependent;
- (b) \$400 for any elderly family or disabled family;

(c) For any family that is not an elderly family or disabled family but has a member (other than the head of household or spouse) who is a person with a disability, disability assistance expenses in excess of three percent of annual income, but this allowance may not exceed the employment income received by family members who are 18 years of age or older as a result of the assistance to the person with disabilities;

(d) For any elderly family or disabled family:

(1) That has no disability assistance expenses, an allowance for medical expenses equal to the amount by which the medical expenses exceed three percent of annual income;

(2) That has disability assistance expenses greater than or equal to three percent of annual income, an allowance for disability assistance expenses computed in accordance with paragraph (c) of this section, plus an allowance for medical expenses that is equal to the family's medical expenses;

(3) That has disability assistance expenses that are less than three percent of annual income, an allowance for combined disability assistance expenses and medical expenses that is equal to the amount by which the sum of these expenses exceeds three percent of annual income; and

(e) Child care expenses.

§ 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

[65 FR 16717, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16717, Mar. 29, 2000, §5.613 was revised, effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.613 Total tenant payment.

(a) *Total tenant payment for families whose initial lease is effective on or after August 1, 1982.* (1) Total tenant payment is the amount calculated under section 3(a)(1) of the 1937 Act (42 U.S.C. 1437a(a)(1)). If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (C) of section 3(a)(1) of the 1937 Act (42 U.S.C. 1437a(a)(1)(C)) shall be the amount resulting from one application of the percentage.

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(2) *For public housing only.* Total tenant payment for families residing in public housing does not include charges for excess utility consumption or other miscellaneous charges (see §966.4 of this chapter).

(b) *Total tenant payment for families residing in public housing whose initial lease was effective before August 1, 1982.* Paragraphs (b) and (c) of 24 CFR 913.107, as it existed immediately before November 18, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 900 to 1699), will continue to govern the total tenant payment of families, under a public housing program, whose initial lease was effective before August 1, 1982.

(c) *Inapplicability to the Section 8 Rental Voucher Program.* The provisions of this section do not apply to the Section 8 Rental Voucher Program.

§5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

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

Covered families. Families who receive welfare assistance or other public assistance benefits (“welfare benefits”) from a State or other public agency (“welfare agency”) under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at §5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family’s annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

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(2) “Specified welfare benefit reduction” does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family’s annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with §5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family’s annual income includes imputed welfare income in family annual income, as determined at the PHA’s interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) *Review of PHA decision.* (1) *Public housing.* If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to §966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) *Section 8 participant.* A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with §982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the

PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

[65 FR 16717, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16717, Mar. 29, 2000, §5.615 was revised, effective Apr. 28, 2000. For the convenience of the user, the superseded text is set forth as follows:

§ 5.615 Utility reimbursements.

(a) *General.* Where applicable, the utility reimbursement shall be paid to the family in the manner provided in the pertinent program regulations. If the family and the utility company consent, a PHA or owner may pay the utility reimbursement jointly to the family and the utility company, or directly to the utility company.

(b) *Inapplicability to the Section 8 Rental Voucher Program.* The provisions of this section do not apply to the Section 8 Rental Voucher Program. For the Voucher Program, in cases where the amount of the HAP payment exceeds the rent to owner, the excess will be paid to the family.

§ 5.617 Reexamination and verification.

(a) *Responsibility for initial determination and reexamination.* The PHA or owner, as applicable, must conduct a reexamination of family income and

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composition at least annually. The “effective date” of an examination or re-examination refers to:

(1) In the case of an examination for admission, the effective date of the lease; and

(2) In the case of a reexamination of an existing participant, the effective date of the redetermined housing assistance payment with respect to the Rental Voucher program and the effective date of the redetermined total tenant payment in all other cases.

(b) *Verification.* (1) As a condition of admission to, or continued occupancy of, any assisted unit, the PHA or owner, as applicable, shall require the family head and other such family members as it designates to execute a HUD-approved release and consent form (including any release and consent as required under 24 CFR part 760) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or owner, as applicable, and to HUD such information as the HA or owner, as applicable, and HUD determines to be necessary.

(2) The PHA or owner shall also require the family to submit directly documentation determined to be necessary. Information or documentation shall be considered necessary if it is required for purposes of determining or auditing a family’s eligibility to receive housing assistance, for determining the family’s annual income, adjusted income or total tenant payment.

(3) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this subpart or applying for assistance.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2577-0083.)

[61 FR 54498, Oct. 18, 1996, as amended at 62 FR 27125, May 16, 1997]

EFFECTIVE DATE NOTE: At 65 FR 16718, Mar. 29, 2000, § 5.617 was removed, effective Apr. 28, 2000.

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FAMILY PAYMENT

§ 5.628 Total tenant payment.

(a) *Determining total tenant payment (TTP).* Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of the family’s monthly adjusted income;

(2) 10 percent of the family’s monthly income;

(3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family’s actual housing costs, is specifically designated by such agency to meet the family’s housing costs, the portion of those payments which is so designated; or

(4) The minimum rent, as determined in accordance with § 5.630.

(b) *Determining TTP if family’s welfare assistance is ratably reduced.* If the family’s welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

[65 FR 16718, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16718, Mar. 29, 2000, § 5.628 was added, effective Apr. 28, 2000.

§ 5.630 Minimum rent.

(a) *Minimum rent.* (1) The PHA must charge a family no less than a minimum monthly rent established by the responsible entity, except as described in paragraph (b) of this section.

(2) For the public housing program and the section 8 moderate rehabilitation, and certificate or voucher programs, the PHA may establish a minimum rent of up to \$50.

(3) For other section 8 programs, the minimum rent is \$25.

(b) *Financial hardship exemption from minimum rent.* (1) *When is family exempt from minimum rent?* The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent

because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

(i) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;

(ii) When the family would be evicted because it is unable to pay the minimum rent;

(iii) When the income of the family has decreased because of changed circumstances, including loss of employment;

(iv) When a death has occurred in the family; and

(v) Other circumstances determined by the responsible entity or HUD.

(2) *What happens if family requests a hardship exemption?* (i) *Public housing.*

(A) If a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the PHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(B) The PHA must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) The PHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

(D) If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the suspension of the minimum rent. The PHA must offer the family a reasonable repayment agreement, on terms and conditions established by the PHA, for the amount of back minimum rent owed by the family.

(ii) *All section 8 programs.* (A) If a family requests a financial hardship exemption, the responsible entity must

suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

(B) The responsible entity must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) If the responsible entity determines that a qualifying financial hardship is temporary, the PHA must not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption. At the end of the 90-day suspension period, the responsible entity must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by the responsible entity, for the amount of back rent owed by the family.

(iii) *All programs.* (A) If the responsible entity determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.

(B) If the responsible entity determines a qualifying financial hardship is long term, the responsible entity must exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(C) The financial hardship exemption only applies to payment of the minimum rent (as determined pursuant to §5.628(a)(4) and §5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to §5.628(a)(1), (a)(2) and (a)(3)).

(3) *Public housing: Grievance hearing concerning PHA denial of request for hardship exemption.* If a public housing

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family requests a hearing under the PHA grievance procedure, to review the PHA's determination denying or limiting the family's claim to a financial hardship exemption, the family is not required to pay any escrow deposit in order to obtain a grievance hearing on such issues.

[65 FR 16718, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16718, Mar. 29, 2000, § 5.630 was added, effective Apr. 28, 2000.

§ 5.632 Utility reimbursements.

(a) *Applicability.* This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program (for distribution of a voucher housing assistance payment that exceeds rent to owner, see § 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see § 960.253 of this title). (Utility reimbursement is not paid for a public housing family that is paying a flat rent.)

(b) *Payment of utility reimbursement.*

(1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment.

(2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.

(3) In the other Section 8 programs, the owner must pay the utility reimbursement either:

(i) To the family, or

(ii) With consent of the family, to the utility supplier to pay the utility bill on behalf of the family.

[65 FR 16719, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16719, Mar. 29, 2000, § 5.632 was added, effective Apr. 28, 2000.

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§ 5.634 Tenant rent.

(a) *Section 8 programs.* For Section 8 programs other than the Section 8 voucher program, tenant rent is total tenant payment minus any utility allowance.

(b) *Public housing.* See § 960.253 of this title for the determination of tenant rent.

[65 FR 16719, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16719, Mar. 29, 2000, § 5.634 was added, effective Apr. 28, 2000.

SECTION 8 PROJECT-BASED ASSISTANCE: OCCUPANCY REQUIREMENTS

§ 5.653 Section 8 project-based assistance programs: Admission—Income-eligibility and income-targeting.

(a) *Applicability.* This section describes requirements concerning income-eligibility and income-targeting that apply to the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Who is eligible?*

(1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to the Section 8 project-based assistance programs. (This paragraph (b) does not apply to the Section 8 project-based voucher program under part 983 of this title.)

(c) *Targeting to extremely low income families.* For each project assisted under a contract for project-based assistance, of the dwelling units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families that are extremely low income families at the time of admission.

(d) *Limitation on admission of non-very low income families.*

(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the Section 8 project-based

dwelling units that were available for occupancy under Section 8 Housing Assistance Payments Contracts effective before October 1, 1981 and that are leased on or after that date shall be available for leasing by low income families other than very low income families. HUD reserves the right to limit the admission of low income families other than very low income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the Section 8 project-based dwelling units that initially become available for occupancy under Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low income families other than families that are very low income families at the time of admission to the Section 8 program. Except with the prior approval of HUD under paragraphs (d)(3) and (d)(4) of this section, the owner may only lease such units to very low income families.

(3) *Request for exception.* A request by an owner for approval of admission of low income families other than very low income families to section 8 project-based units must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(i) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low income families;

(ii) Commitment of an owner to attaining occupancy by families with a broad range of incomes;

(iii) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes supported by evidence that the Agency is pursuing this goal throughout its assisted projects in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103); and

(iv) Low-income families that otherwise would be displaced from a Section 8 project.

(4) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income-eligibility and for income-targeting under this section.

(f) *Reporting.* The Section 8 owner must comply with HUD-prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements.

[65 FR 16719, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16719, Mar. 29, 2000, § 5.653 was added, effective Apr. 28, 2000.

§ 5.655 Section 8 project-based assistance programs: Owner preferences in selection for a project or unit.

(a) *Applicability.* This section applies to the section 8 project-based assistance programs. The section describes requirements concerning the Section 8 owner's selection of residents to occupy a project or unit, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Selection.* (1) *Selection for owner's project or unit.* Selection for occupancy of a project or unit is the function of the Section 8 owner. However, selection is subject to the income-eligibility and income-targeting requirements in § 5.653.

(2) *Tenant selection plan.* The owner must adopt a written tenant selection plan in accordance with HUD requirements.

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(3) *Amount of income.* The owner may not select a family for occupancy of a project or unit in an order different from the order on the owner's waiting list for the purpose of selecting a relatively higher income family. However, an owner may select a family for occupancy of a project or unit based on its income in order to satisfy the targeting requirements of § 5.653(c).

(4) *Selection for particular unit.* In selecting a family to occupy a particular unit, the owner may match family characteristics with the type of unit available, for example, number of bedrooms. If a unit has special accessibility features for persons with disabilities, the owner must first offer the unit to families which include persons with disabilities who require such features (see §§ 8.27 and 100.202 of this title).

(5) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(c) *Particular owner preferences.* The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although the owner is not prohibited from adopting a residency preference, the owner may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a).

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area").

(iii) An owner's residency preference must be approved by HUD in one of the following methods:

(A) Prior approval of the housing market area in the Affirmative Fair Housing Marketing plan (in accordance with § 108.25 of this title) as a residency preference area;

(B) Prior approval of the residency preference area in the PHA plan of the jurisdiction in which the project is located;

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(C) Modification of the Affirmative Fair Housing Marketing Plan, in accordance with § 108.25 of this title,

(iv) Use of a residency preference may not have the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(v) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(vi) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* (i) The owner may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities.

(ii) If the owner adopts a preference for admission of working families, the owner must not give a preference based on the amount of earned income.

(3) *Preference for person with disabilities.* The owner may adopt a preference for admission of families that include a person with disabilities. However, the owner may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence.* The owner should consider whether to adopt a preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.* The owner may adopt a preference for admission of single persons who are age

62 or older, displaced, homeless, or persons with disabilities over other single persons.

[65 FR 16720, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16720, Mar. 29, 2000, § 5.655 was added, effective Apr. 28, 2000.

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Regular reexamination.* The owner must conduct a reexamination and re-determination of family income and composition at least annually.

(c) *Interim reexaminations.* A family may request an interim reexamination of family income because of any changes since the last examination. The owner must make the interim reexamination within a reasonable time after the family request. The owner may adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

[65 FR 16720, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16720, Mar. 29, 2000, § 5.657 was added, effective Apr. 28, 2000.

§ 5.659 Family information and verification.

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation program and the project-based certificate or voucher programs.

(b) *Family obligation to supply information.* (1) The family must supply any information that HUD or the owner determines is necessary in administration of the Section 8 program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the owner or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(c) *Family release and consent.* (1) As a condition of admission to or continued occupancy of a unit with Section 8 assistance, the owner must require the family head, and such other family members as the owner designates, to execute a HUD-approved release and consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the owner or HUD such information as the owner or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the Section 8 program.

(d) *Owner responsibility for verification.* The owner must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

- (1) Reported family annual income;
- (2) The value of assets;
- (3) Expenses related to deductions from annual income; and
- (4) Other factors that affect the determination of adjusted income.

[65 FR 16721, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16721, Mar. 29, 2000, § 5.659 was added, effective Apr. 28, 2000.

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§ 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.

(a) *Applicability.* This section describes when a Section 8 owner may lease a Section 8 unit to police or other security personnel with continued Section 8 assistance for the unit. This section applies to the Section 8 project-based assistance programs.

(b) *Terms.* (1) *Security personnel* means:

- (i) A police officer, or
- (ii) A qualified security professional, with adequate training and experience to provide security services for project residents.

(2) *Police officer* means a person employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments.

(3) *Security* includes the protection of project residents, including resident project management from criminal or other activity that is a threat to person or property, or that arouses fears of such threat.

(c) *Owner application.* (1) The owner may submit a written application to the contract administrator (PHA or HUD) for approval to lease an available unit in a Section 8 project to security personnel who would not otherwise be eligible for Section 8 assistance, for the purpose of increasing security for Section 8 families residing in the project.

(2) The owner's application must include the following information:

(i) A description of criminal activities in the project and the surrounding community, and the effect of criminal activity on the security of project residents.

(ii) Qualifications of security personnel who will reside in the project, and the period of residence by such personnel. How owner proposes to check backgrounds and qualifications of any security personnel who will reside in the project.

(iii) Full disclosure of any family relationship between the owner and any security personnel. For this purpose, "owner" includes a principal or other interested party.

(iv) How residence by security personnel in a project unit will increase

security for Section 8 assisted families residing in the project.

(v) The amount payable monthly as rent to the unit owner by security personnel residing in the project (including a description of how this amount is determined), and the amount of any other compensation by the owner to such resident security personnel.

(vi) The terms of occupancy by such security personnel. The lease by owner to the approved security personnel may provide that occupancy of the unit is authorized only while the security personnel is satisfactorily performing any agreed responsibilities and functions for project security.

(vii) Other information as requested by the contract administrator.

(d) *Action by contract administrator.* (1) The contract administrator shall have discretion to approve or disapprove owner's application, and to impose conditions for approval of occupancy by security personnel in a section 8 project unit.

(2) Notice of approval by the contract administrator shall specify the term of such approved occupancy. Such approval may be withdrawn at the discretion of the contract administrator, for example, if the contract administrator determines that such occupancy is not providing adequate security benefits as proposed in the owner's application; or that security benefits from such occupancy are not a sufficient return for program costs.

(e) *Housing assistance payment and rent.* (1) During approved occupancy by security personnel as provided in this section, the amount of the monthly housing assistance payment to the owner shall be equal to the contract rent (as determined in accordance with the HAP contract and HUD requirements) minus the amount (as approved by the contract administrator) of rent payable monthly as rent to the unit owner by such security personnel. The owner shall bear the risk of collecting such rent from such security personnel, and the amount of the housing assistance payment shall not be increased because of non-payment by such security personnel. The owner shall not be entitled to receive any vacancy payment for the period following occupancy by such security personnel.

(2) In approving the amount of monthly rent payable by security personnel for occupancy of a contract unit, the contract administrator may consider whether security services to be performed are an adequate return for housing assistance payments on the unit, or whether the cost of security services should be borne by the owner from other project income.

[65 FR 16721, Mar. 29, 2000]

EFFECTIVE DATE NOTE: At 65 FR 16721, Mar. 29, 2000, § 5.661 was added. This section contains information collection and record-keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart G—Physical Condition Standards and Inspection Requirements

SOURCE: 63 FR 46577, Sept. 1, 1998, unless otherwise noted.

§ 5.701 Applicability.

(a) This subpart applies to housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. “Project-based assistance” means Section 8 assistance that is attached to the structure (see § 982.1(b)(1) of this title regarding the distinction between “project-based” and “tenant-based” assistance);

(2) Section 202 Program of Supportive Housing for the Elderly;

(3) Section 811 Program of Supportive Housing for Persons with Disabilities;

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) This subpart also applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(5) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(6) Section 231 of the NHA (Housing for Elderly Persons);

(7) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(8) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(9) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(10) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(11) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

(c) This subpart also applies to Public Housing (housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act).

(d) For purposes of this subpart, the term “HUD housing” means the types of housing listed in paragraphs (a), (b), and (c) of this section.

§ 5.703 Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in § 5.701(a), mortgagors of housing described in § 5.701(b), and PHAs and other entities approved by HUD owning housing described in § 5.701(c), must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads,

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storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(b) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(d) *Dwelling units.* (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).

(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical,

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community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

(f) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

(g) *Compliance with State and local codes.* The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

§ 5.705 Uniform physical inspection requirements.

(a) Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually (unless otherwise specifically notified by HUD), in accordance with HUD-prescribed physical inspection procedures. For Public Housing, PHAs have the option to inspect Public Housing units using the procedures prescribed in accordance with this section.

(b) Inspections in accordance with the physical inspection procedures identified in paragraph (a) of this section shall not be required until HUD has issued the inspection software and accompanying guidebook. When the software and guidebook have been issued, HUD will publish a notice in the FEDERAL REGISTER to inform the public when the software and guidebook are available. The notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with this subpart. Until the date that is 30 days after HUD publishes such notice, any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must continue to comply with inspection requirements in effect immediately prior to that date.

Subpart H—Uniform Financial Reporting Standards**§ 5.801 Uniform financial reporting standards.**

(a) *Applicability.* This subpart H implements uniform financial reporting standards for:

(1) Public housing agencies (PHAs) receiving assistance under sections 5, 9, or 14 of the 1937 Act (42 U.S.C. 1437c, 1437g, and 1437l) (Public Housing);

(2) PHAs as contract administrators for any Section 8 project-based or tenant-based housing assistance payments program, which includes assistance under the following programs:

(i) Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-

Aside, Property Disposition, and Moderate Rehabilitation (including the Single Room Occupancy program for homeless individuals);

(ii) Section 8 Project-Based Certificate programs;

(iii) Any program providing Section 8 project-based renewal contracts; and

(iv) Section 8 tenant-based assistance under the Section 8 Certificate and Voucher program.

(3) Owners of housing assisted under any Section 8 project-based housing assistance payments program:

(i) Including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs;

(ii) Excluding the Section 8 Moderate Rehabilitation Program (which includes the Single Room Occupancy program for homeless individuals) and the Section 8 Project-Based Certificate Program;

(4) Owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured, or held by HUD, including but not limited to housing under the following HUD programs:

(i) Section 202 Program of Supportive Housing for the Elderly;

(ii) Section 811 Program of Supportive Housing for Persons with Disabilities;

(iii) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects);

(iv) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 et seq.) (Rental Housing Insurance);

(v) Section 213 of the NHA (Cooperative Housing Insurance);

(vi) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(vii) Section 221(d) (3) and (5) of the NHA (Housing for Moderate Income and Displaced Families);

(viii) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(ix) Section 231 of the NHA (Housing for Elderly Persons);

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(x) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Board and Care Homes);

(xi) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(xii) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(xiii) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(xiv) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk-Sharing Program).

(b) *Submission of financial information.* Entities (or individuals) to which this subpart is applicable must provide to HUD, on an annual basis, such financial information as required by HUD. This financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles as further defined by HUD in supplementary guidance;

(2) Submitted electronically to HUD through the internet, or in such other electronic format designated by HUD, or in such non-electronic format as HUD may allow if the burden or cost of electronic reporting is determined by HUD to be excessive; and

(3) Submitted in such form and substance as prescribed by HUD.

(c) *Annual financial report filing dates.*

(1) For entities listed in paragraphs (a)(1) and (2) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law (for public housing agencies, see also 24 CFR 903.33).

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 90 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(d) *Reporting compliance dates.* Entities (or individuals) that are subject to the reporting requirements in this sec-

tion must commence compliance with these requirements as follows:

(1) For PHAs listed in paragraphs (a)(1) and (a)(2) of this section, the requirements of this section will begin with those PHAs with fiscal years ending September 30, 1999 and later. Unaudited financial statements will be required 60 days after the PHA's fiscal year end, and audited financial statements will then be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A-133 (See 24 CFR 84.26). A PHA with a fiscal year ending September 30, 1999 that elects to submit its unaudited financial report earlier than the due date of November 30, 1999 must submit its report as required in this section. On or after September 30, 1998, but prior to November 30, 1999 (except for a PHA with its fiscal year ending September 30, 1999), PHAs may submit their financial reports in accordance with this section.

(2) For entities listed in paragraphs (a)(3) and (a)(4) of this section, the requirements of this section will begin with those entities with fiscal years ending December 31, 1998 and later. Entities listed in paragraphs (a)(3) and (a)(4) of this section with fiscal years ending December 31, 1998 that elect to submit their reports earlier than the due date must submit their financial reports as required in this section. On or after September 30, 1998 but prior to January 1, 1999, these entities may submit their financial reports in accordance with this section.

(e) *Limitation on changing fiscal years.* To allow for a period of consistent assessment of the financial reports submitted to HUD under this subpart part, PHAs listed in paragraphs (a)(1) and (a)(2) of this section will not be allowed to change their fiscal years for their first three full fiscal years following October 1, 1998.

(f) *Responsibility for submission of financial report.* The responsibility for submission of the financial report due to HUD under this section rests with the individuals and entities listed in paragraph (a) of this section.

[63 FR 46591, Sept. 1, 1998, as amended at 64 FR 1505, Jan. 11, 1999; 64 FR 33755, June 24, 1999; 65 FR 16295, Mar. 27, 2000]

Office of the Secretary, HUD

§ 6.2

EFFECTIVE DATE NOTE: At 65 FR 16295, Mar. 27, 2000, § 5.801, paragraph (a)(4)(xiv) was removed and paragraph (c) was revised, effective Apr. 26, 2000. For the convenience of the user, the superseded text is set forth as follows:

AUTHORITY: 42 U.S.C. 3535(d) 42 U.S.C. 5309. SOURCE: 64 FR 3797, Jan. 25, 1999, unless otherwise noted.

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* * * * *

(c) *Annual financial report filing dates.* (1) The financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

(2) For entities listed in paragraphs (a) (3) and (4) of this section, the first annual financial report shall be due on the date provided in this paragraph (2), or at such later date that HUD may provide through notice. This delayed submission date is only for the first year of compliance with the requirements of this section:

(i) For entities with fiscal years ending December 31, 1998, the first annual financial report shall be due August 31, 1999;

(ii) For entities with fiscal years ending in January through April 1999, the first annual financial report shall be due August 31, 1999;

(iii) For entities with fiscal years ending in May through November 1999, the first annual financial report shall be due 120 days after the end of the applicable fiscal year end date.

* * * * *

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A—General Provisions

- Sec.
- 6.1 Purpose.
- 6.2 Applicability.
- 6.3 Definitions.
- 6.4 Discrimination prohibited.
- 6.5 Discrimination prohibited—employment.
- 6.6 Records to be maintained.

Subpart B—Enforcement

- 6.10 Compliance information.
- 6.11 Conduct of investigations.
- 6.12 Procedure for effecting compliance.
- 6.13 Hearings and appeals.

Subpart A—General Provisions

§ 6.1 Purpose.

The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

§ 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I that