



Wednesday
April 5, 1995

Part II

**Department of
Housing and Urban
Development**

Office of the Secretary

24 CFR Part 215, et al.
Combined Income and Rent; Interim Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Secretary

**24 CFR Parts 215, 236, 813, 905, and
913**

[Docket No. R-95-1713; FR-3324-I-01]

RIN 2501-AB61

Combined Income and Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends HUD's current regulations governing public housing, Indian housing and assisted housing programs by adding nine exclusions to the definition of annual income. With regard to the first eight exclusions, the Department has concluded that, for policy reasons, these payments should not be considered when determining a family's income in the housing assistance programs involved. In contrast, the last exclusion is a statutorily required exclusion to the definition of annual income.

This interim rule also adds a statutory change to the definition of adjusted income for the Indian housing program, and makes two technical corrections to the existing regulations.

DATES: Effective Date: This interim rule is effective on May 5, 1995.

Sunset Provision: Sections 215.21(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15); §§ 236.3(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15); §§ 813.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(14), and (c)(15); §§ 905.102(2)(ii), (2)(vi), (2)(viii)(D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income*; and §§ 913.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(15), and (c)(16) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes in this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

Comments due date: June 5, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours

(7:30 a.m.–5:30 p.m. Eastern Time) at the above address. Comments sent by FAX will not be accepted.

FOR FURTHER INFORMATION CONTACT: For Public Housing: Bruce Vincent, Room 4206, telephone number (202) 708-0744; For Native American Programs: Dominic A. Nessi, Room 4140, telephone number (202) 708-1015; For Housing: Barbara D. Hunter, Room 6180, telephone number (202) 708-3944; Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; (TDD: (202) 708-0850). Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises HUD's current regulations for public housing, Indian housing, Section 8 housing and other assisted housing programs by excluding from annual income the following: (1) Resident service stipends, (2) adoption assistance payments, (3) student financial assistance (4) earned income of full-time students, (5) adult foster care payments, (6) compensation from State or local job training programs and training of resident management staff, (7) property tax rebates, (8) home care payments for developmentally disabled children or adult family members, and (9) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum.

This interim rule also amends the definition of adjusted income for Indian Housing programs by allowing a deduction for both child care expenses and excessive travel expenses, as required by section 103(a)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1993; hereafter referred to as "1992 HCD Act").

Finally, this interim rule makes two technical corrections to existing regulations (see preamble discussion in section I(D).)

A. Discretionary Income Exclusions

By adding the first eight exclusions to the definition of income in the public housing, Indian housing, section 8 housing, and other assisted housing programs, the Secretary is merely exercising the discretion conferred upon him to define family income by section 3(b)(4) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(4)), section 101(c)(2) of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(c)(2)), and

section 236(m) of the National Housing Act (12 U.S.C. 1715z-1(m)). The eight "discretionary" income exclusions will affect the approximately 1.3 million families currently residing in public and Indian housing developments, the approximately 1.5 million families participating in the Section 8 Rental Certificate and Voucher programs, and the approximately 2 million families in privately owned assisted housing projects under the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-aside and Property Disposition Set-aside programs, the Section 236 Interest Reduction and Rental Assistance Payments Program, and the Section 215 Rent Supplement Payments program.

The Department believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, HUD believes that the costs of these additional exclusions will be offset by long-term future savings because the exclusions will increase the number of economically self-sufficient families residing in assisted housing. Finally, because this interim rule promotes long-term upward mobility, educational achievement and entrepreneurship, the number of families dependent on welfare and other social services programs may decline, thereby resulting in future cost savings for other Federal programs.

The eight "discretionary" exclusions to annual income are:

1. *Resident Service Stipends.* This exclusion exempts from annual income resident service stipends, but only if the resident service stipend does not exceed \$200 per month. A resident service stipend is a modest amount (i.e. \$200 or less per month) received by a resident for performing a service for the housing authority or owner, on a part-time basis, that enhances the quality of life in the assisted housing development. Such services include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and resident management.

The Department wants to emphasize that if a housing authority or owner pays a resident more than \$200 per month, then the entire amount received as a "stipend" does not qualify as a resident service stipend under this interim rule. For example, suppose a housing authority pays a resident \$150 per month for part-time services that enhance the quality of public housing. That \$150 payment would not be counted in determining the annual income of the resident. Suppose, however, instead of \$150 per month, the

housing authority pays the resident \$400 per month. In this latter situation, the housing authority may not exclude up to \$200 per month (the maximum stipend amount); rather, the entire amount of the payment (i.e. \$400) is included in annual income.

If a resident receives more than \$200 per month, even if the payment is characterized as a "stipend", the payment does not qualify as a resident service stipend under this interim rule. The Department wishes to point out that there is no limit to the number of stipends a family may receive. However, each family member may only exclude one stipend at a time.

On August 24, 1994 (59 FR 43622), the Department published a final rule which added a resident service stipend exclusion for resident council officers in the public and Indian Housing programs. The Department wants to emphasize that today's interim rule expands the resident service stipend exclusion to all assisted housing programs, and makes all residents eligible for the resident service stipend exclusion, regardless of whether the resident is an officer of the resident council.

2. Adoption Assistance Payments. This exclusion removes from annual income payments received for the care of adopted children to the extent that the payments exceed \$480 per adopted child. Currently, payments for the care of foster children are excluded, but similar payments for the care of adopted children are not. (Although, when determining adjusted income, adopted children qualify for a \$480 deduction, while foster children do not.)

3. Full Amount of Student Financial Assistance. This exclusion exempts from annual income all amounts received from student financial assistance. Student financial assistance is interpreted broadly to include various scholarships, educational entitlements, grants, work-study programs and financial aid packages. Currently, the portion of an educational scholarship available for general living expenses is included in annual income.

4. Earned Income of Full-Time Students. This exclusion exempts earnings in excess of \$480 for each full-time student 18 years old or older (except the head of household and spouse). The exemption only applies to earnings in excess of \$480 since the family already receives a \$480 deduction from income for any full-time student.

5. Adult Foster Care Payments. This exclusion removes from the computation of annual income payments for the care of foster adults

(usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone). Currently, only payments for the care of foster children are excluded from annual income. In adding this exclusion, the Department is not requiring that housing authorities or owners permit foster adults in assisted housing. As before, each housing authority or owner will continue to adopt its own policies, subject to current HUD requirements.

6. State or local employment training programs and training of resident management staff. This exclusion exempts compensation received from qualifying employment training programs and training of resident management staff. To qualify under this exclusion, the compensation received must be a component of a state or local employment training program with clearly defined goals and objectives. Moreover, only the compensation received incident to the training program is excluded (i.e. any additional income received during the training program, such as welfare benefits, will continue to be counted as income).

In addition, this exclusion only covers compensation received while the resident participates in the employment training program, and the duration of participation must be for a limited period determined in advance. An example of compensation which falls under this exclusion is compensation received from on-the-job training and during apprenticeship programs.

7. State tax rent credits and rebates. This provision excludes state rent credits and rebates for property taxes paid on a dwelling unit. The Department is adding this exclusion because the Department believes that this exclusion will support state efforts to assist low income persons.

8. Homecare payments. This exclusion exempts amounts paid by a State agency to families that have developmentally disabled children or adult family members living at home. States that provide families with homecare payments do so to offset the cost of services and equipment needed to keep a developmentally disabled family member at home, rather than placing the family member in an institution. Since families that strive to avoid institutionalization should be encouraged, and not punished, the Department is adding this additional exclusion to income. The Department wishes to point out that today's interim rule does not define "developmentally disabled" since whether a family member qualifies as developmentally disabled, and is therefore eligible for

homecare assistance, is determined by each individual State.

B. Exclusion of Deferred Periodic Payments of SSI and Social Security Received in Lump Sum

Section 103(a)(1) of the 1992 HCD Act amended section 3(b)(4) of the U.S. Housing Act of 1937 to exclude from annual income, "any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1382b(a)(7))." Section 1613(a)(7) of the Social Security Act covers deferred periodic payments received in a lump sum from supplemental security income (SSI) and social security benefits.

Section 103(a)(3) of the 1992 HCD Act, however, limits implementation of the lump sum exclusion unless appropriations are provided in advance to cover any additional costs resulting from implementation of the exclusion. The Department has determined that implementing section 103(a)(1) will not result in any additional costs to the Department. Accordingly, no additional appropriations are required to implement section 103(a)(1).

Section 2 of the 1992 HCD Act makes all provisions of that act effective on the date of enactment—October 28, 1992, unless another date is specifically provided. Because HUD determined that the exclusion of deferred periodic payments of SSI and social security benefits from annual income is effective as of October 28, 1992, and to limit the number of retroactive adjustments, the Department previously implemented this exclusion by HUD interim notice, PHA 93-11, issued March 16, 1993. That notice implemented section 103(a)(1) with respect to public and Indian Housing programs, and all section 8 programs.

Finally, while section 103(a)(1) does not apply to the Section 215 Rent Supplement Payments program, or the Section 236 Interest Reduction and Rental Assistance Payments Program, it is a long standing Departmental policy to use the same definition of annual income for all of the Department's subsidized housing programs. Accordingly, in today's interim rule, the Department is extending the exclusion of deferred periodic payments of SSI and social security benefits from annual income to the Section 215 Rent Supplement Payments program and the Section 236 Interest Reduction and Rental Assistance Payments Program. However, because the Department is adding this exclusion as a matter of agency discretion, the exclusion is effective as of the effective date of this interim rule.

C. Change in Definition of Adjusted Income for Indian Housing Authorities

Section 103(a)(2) of the 1992 HCD Act amended section 3(b)(5) of the U.S. Housing Act of 1937 to change the definition of adjusted income for families assisted by an IHA. As amended, section 3(b)(5) provides a deduction from adjusted income for both child care expenses (to the extent necessary to enable another member of the family to be employed or to further his or her education); and excessive travel expenses (not to exceed \$25 per family per week for employment or education-related travel). (Prior to this amendment, a family was allowed a deduction from adjusted income for either child care expenses or excessive travel expenses.)

Section 103(a)(3) of the 1992 HCD Act requires that appropriations be provided in advance if section 103(a)(2) results in any additional costs to the Department. The Department has determined that there are no additional costs associated with the implementation of Section 103(a)(2).

Section 2 of the HCD Act of 1992 makes all provisions of that act effective on the date of enactment—October 28, 1992, unless another date is specifically provided. HUD has determined that the change to the definition of adjusted income is effective as of October 28, 1992.

Finally, to limit the number of retroactive adjustments, the Department previously implemented this exclusion by a HUD interim notice, PHA 93-23, issued May 19, 1993.

D. Technical Corrections

Finally, this interim rule contains two technical corrections. First, this interim rule removes the following parenthetical in § 913.106(c)(11): “[t]his provision does not apply to residents participating in the Family Self-Sufficiency [FSS] Program who are utilizing the escrow account.” When the Department implemented section 515(b) of the National Affordable Housing Act of 1990 (Pub.L. 101-625) (NAHA) in the final rule published on August 24, 1994 (59 FR 43622), it inadvertently added the above parenthetical to the rule text. Because section 515(b) of NAHA covers all public housing residents, without regard to whether a resident participates in the FSS program, this technical correction is necessary.

The second technical correction amends § 236.72. Currently, § 236.72 incorrectly references “adjusted income” rather than “annual income.” This interim rule changes the reference in § 236.72 to “annual income.”

II. Other Matters

A. Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. Any changes made to the interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this interim rule will not have federalism implications and, thus, are not subject to review under that Order. Specifically, the interim rule adds additional exclusions to the definition of income in the assisted housing programs. As such, the interim rule will not impinge upon the relationship between the Federal Government and State and local governments, and the interim rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule has potential for significant impact on family formation, maintenance, and general well-being. Families will benefit from this interim rule by being allowed additional exclusions from annual income. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities.

With regard to the lump sum exclusion, the number of lump sum exclusions in any one project will be minor, and will not significantly impact any HA. With regard to the remaining income exclusions, since HUD will supplement any lost rental income from the added exclusions, the exclusions will not have an economic impact on housing authorities.

F. Regulatory Agenda

This interim rule was listed as item number 1748 in the Department's Semiannual Agenda of Regulations published on November 14, 1994, (59 FR 57632, 57646) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number(s) are 14.146, 14.147, 14.850 and 15.141.

H. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is “impracticable, unnecessary, or contrary to the public interest.” (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment because the interim rule adds nine exclusions to the definition of annual income, which will benefit residents and tenants, without adversely affecting any other group. The first eight exclusions will affect approximately 1.3 million families currently residing in public and Indian housing developments, approximately 1.5 million families participating in the Section 8 Rental Certificate and Voucher programs, and approximately 2 million families in private-owned assisted housing projects under certain HUD programs.

As stated earlier in this preamble, the Department believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing opportunities. Moreover, the Department believes that the costs of these additional exclusions will be offset by long term future savings because the exclusions will increase the number of economically

self-sufficient families residing in assisted housing. Finally, because this interim rule promotes long-term upward mobility, educational achievement and entrepreneurship, the number of families dependent on welfare and other social services programs may decline, thereby resulting in future cost savings for other Federal programs.

For these reasons, the Department believes that delaying implementation would be contrary to public interest.

I. Sunset of Interim Rule

In accordance with the Department's policy on interim rules, the amendments made by this interim rule shall expire on the twelve-month anniversary date of the effective date of this interim rule unless extended by notice published in the **Federal Register**, or adopted by a final rule published on or before the twelve-month anniversary date of the effective date of this interim rule.

List of Subjects

24 CFR Part 215

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

24 CFR Part 236

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

24 CFR Part 813

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

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Homeownership, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 913

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 215, 236, 813, 905, and 915 are amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

2. A new § 215.2 is added to subpart A to read as follows:

§ 215.2 Effective date of regulation.

Sections 215.21(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes in this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

3. Section 215.21 is amended by revising paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 215.21 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments 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 payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) 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 individuals 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 (but see 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 § 215.1;

(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 disabled person 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) 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 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; or

(v) Compensation from State or local employment training programs 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 a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, 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) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;

(14) 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;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and

equipment needed to keep the developmentally disabled family member at home; or

(16) 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 section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s). A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

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

4. The authority citation for 24 CFR part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

5. Section 236.3 is amended by revising the section heading, paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 236.3 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments 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 payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) 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 individuals 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 (but see 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 § 236.2;

(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 disabled person 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) 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 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; or

(v) Compensation from State or local employment training programs 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 a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, 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) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(14) 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;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) 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 section 236 of the National Housing Act. A notice will be published in the **Federal Register** and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

6. A new § 236.6 is added to subpart A to read as follows:

§ 236.6 Effective date.

Sections 236.3(c)(2), (c)(6), (c)(8)(iv) through (v), and (c)(11) through (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

7. Section 236.72 is amended by revising paragraph (a) and the first sentence in paragraph (b) introductory text, to read as follows:

§ 236.72 Guidelines for assisted admission.

(a) *Maximum income.* The annual income of an applicant shall not exceed the maximum income limits established by the Secretary.

(b) *Ability to pay rent.* The project owner or the owner's managing agent may, in its discretion, admit an applicant for assisted admission whose annual income meets the requirement in paragraph (a) of this section if, in its discretion, the applicant has an adequate income to pay the basic monthly rental charge. * * *

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

8. The authority citation for 24 CFR part 813 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n, and 3535(d).

9. A new § 813.1 is added to read as follows:

§ 813.1 Effective date.

Sections 813.106(c)(2), (c)(6), (c)(8)(iv) through (v), (c)(11), (c)(12), (c)(14), and (c)(15) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

10. Section 813.106 is amended by revising paragraphs (b)(4), (b)(5), and (c), to read as follows:

§ 813.106 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments 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 payment for the delayed start of a periodic payment (but see paragraph (c)(13) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) 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 individuals 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 (but see 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 § 813.102;

(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 disabled person 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) 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 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; or

(v) Compensation from State or local employment training programs 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 a limited period as determined in advance;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, 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) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(14) 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;

(15) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(16) 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 the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs and owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

11. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a, 1437aa, 1437bb, 1437cc, 1437ee; and 3535(d).

12. In § 905.102, the definition for "Adjusted income" is amended by revising paragraph (5) and by adding a new paragraph (6) to the definition, and the definition for "Annual income" is amended by revising paragraphs (1)(iv), (1)(v), and (2) of the definition, to read as follows:

§ 905.102 Definitions.

* * * * *

Adjusted income. * * *

* * * * *

(5) Child care expenses, as defined in this definition; and

(6) Excessive travel expenses, not to exceed \$25 per family per week, for employment or education-related travel.

* * * * *

Annual income. * * *

(1) * * *

(iv) The full amount of periodic payments 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 payment for the delayed start of a periodic payment (but see paragraph (2)(xiv) of this definition);

(v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (2)(iii) of this definition);

* * * * *

(2) Annual income does not include the following:

(i) Income from employment of children (including foster children) under the age of 18 years;

(ii) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the tenant family, who are unable to live alone);

(iii) 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 (but see paragraph (1)(v) of this definition);

(iv) Amounts received by the Family, that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(v) Income of a Live-in Aide;

(vi) The full amount of student financial assistance paid directly to the student or to the educational institution;

(vii) The special pay to a Family member serving in the Armed Forces who is exposed to hostile fire;

(viii)(A) Amounts received under training programs funded by HUD;

(B) Amounts received by a disabled person 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);

(C) 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;

(D) A resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in Indian housing. 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; or

(E) Compensation from State or local employment training programs 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 a limited period as determined in advance by the IHA;

(ix) Temporary, nonrecurring or sporadic income (including gifts);

(x) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, 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;

(xi) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(xii) Adoption assistance payments in excess of \$480 per adopted child;

(xiii) The earnings and benefits to any resident 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 U.S. Housing Act of 1937 (42 U.S.C. 1437t), or any comparable Federal, State, Tribal or local law during the exclusion period. For purposes of this paragraph (2)(xiii) of this definition, the following definitions apply.

(A) *Comparable Federal, State, Tribal or local law* means a program providing employment training and supportive services that:

(1) Is authorized by a Federal, State, Tribal or local law;

(2) Is funded by the Federal, State, Tribal 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 resident participates in a program described in this definition, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937. If the resident is terminated from employment without 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;

(xiv) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(xv) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes on the dwelling unit;

(xvi) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(xvii) 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 the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to IHAs identifying the benefits that qualify for this exclusion. Updates will be

published and distributed when necessary.

* * * * *

13. A new § 905.103 is added to subpart A to read as follows:

§ 905.103 Effective date.

In §§ 905.102, paragraphs (2)(ii), (2)(vi), (2)(viii) (D) through (E), (2)(xi), (2)(xii), (2)(xv), and (2)(xvi) of the definition of *Annual income* shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING PROGRAM

14. The authority citation for 24 CFR part 913 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d, 1437n and 3535(d).

15. A new § 913.1 is added to read as follows:

§ 913.1 Effective date.

Sections 913.106 (c)(2), (c)(6), (c)(8) (iv) through (v), (c)(11), (c)(12), (c)(15), and (c)(16) shall expire and shall not be in effect after May 6, 1996, unless prior to May 6, 1996, the Department publishes changes to this interim rule as a final rule or publishes a notice in the **Federal Register** to extend the effective date.

16. Section 913.106 is amended by revising paragraphs (b)(4), (b)(5), and (c) to read as follows:

§ 913.106 Annual income.

* * * * *

(b) * * *

(4) The full amount of periodic payments 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 payment for the delayed start of a periodic payment (but see paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (but see paragraph (c)(3) 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 individuals 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 (but see 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 § 913.102;

(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 disabled person 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) A resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a public housing resident for performing a service for the PHA, on a part-time basis, that enhances the quality of life in public housing. 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; or

(v) Compensation from State or local employment training programs 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 a limited period as determined in advance by the PHA;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) For all initial determinations and reexaminations of income carried out on or after April 23, 1993, 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) The earnings and benefits to any resident 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 U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), or any comparable Federal, State, or local law during the exclusion period. For purposes of this paragraph, the following definitions apply.

(i) *Comparable Federal, State or local law* means a program providing employment training and supportive services that—

(A) Is authorized by a Federal, State or local law;

(B) Is funded by the Federal, State or local government;

(C) Is operated or administered by a public agency; and

(D) Has as its objective to assist participants in acquiring employment skills.

(ii) *Exclusion period* means the period during which the resident participates in a program described in this section, plus 18 months from the date the resident begins the first job acquired by the resident after completion of such program that is not funded by public housing assistance under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). If the resident is terminated from employment without good cause, the exclusion period shall end.

(iii) *Earnings and Benefits* means the incremental earnings and benefits resulting from a qualifying employment training program or subsequent job;

(14) Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

(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 developmentally disabled family member 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 the United States Housing Act of 1937. A notice will be published in the **Federal Register** and distributed to PHAs identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

* * * * *

Dated: January 26, 1995.

Henry G. Cisneros,
Secretary.

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