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Part II

**Department of
Housing and Urban
Development**

Office of the Secretary

24 CFR Part 5, et al.
Combined Income and Rent; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Parts 5, 200, 236, 813, 913, 950, and 960****[Docket No. FR-3324-F-04]****RIN 2501-AB61****Combined Income and Rent****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: On April 5, 1995 (60 FR 17388), HUD published an interim rule amending its regulations governing public housing, Indian housing, and assisted housing programs by adding nine exclusions to the definition of annual income. The interim rule also added provisions that implement a statutory change to the definition of adjusted income for the Indian housing program, and made two technical corrections to the existing regulations. This rule finalizes the policies and procedures set forth in the April 5, 1995 interim rule and takes into consideration the public comments received on the interim rule. Further, this rule consolidates the nearly identical provisions of 24 CFR parts 813 and 913 into a new subpart F of part 5.

EFFECTIVE DATE: November 18, 1996.

FOR FURTHER INFORMATION CONTACT: For Public Housing, Section 8 Certificates, Vouchers and Moderate Rehabilitation: Linda Campbell, Room 4206, telephone number (202) 708-0744; For Native American Programs: Deborah Lalancette, Room B-133, telephone number (202) 755-0088; For Housing: Barbara D. Hunter, Room 6182, telephone number (202) 708-3944; Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Hearing- or speech-impaired individuals may access these telephone numbers by calling the Federal Information Relay Service TTY at 1-800-877-8339. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

The information collection requirements contained in §§ 5.607 and 5.617 of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control numbers 2502-0204 and 2577-0083. *An agency may not conduct or sponsor, and a person is not required to respond to*

a collection of information unless the collection displays a valid control number.

II. The April 5, 1995 Interim Rule

On April 5, 1995 (60 FR 17388), HUD published for public comment an interim rule amending HUD's regulations governing public housing, Indian housing, Section 8 housing, and other assisted housing programs by adding nine exclusions to the definition of annual income. Specifically, the interim rule excluded from annual income the following: (1) Resident service stipends; (2) adoption assistance payments in excess of \$480 per adopted child; (3) student financial assistance; (4) earned income of full-time students, except the family head or spouse, in excess of \$480 per student; (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) homecare payments for developmentally disabled children or adult family members; and (9) deferred periodic amounts of supplemental security income and social security benefits received in a lump sum or in periodic amounts.

With regard to the first eight exclusions to the definition of income, the Secretary merely exercised 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. 1437 *et seq.*) (the 1937 Act), 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. 1701 *et seq.*). HUD believes these exclusions are essential for achieving its goals of ensuring economic opportunity, empowering the poor and expanding affordable housing.

The ninth exclusion to the definition of annual income was statutorily mandated. Section 103(a)(1) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1993) (1992 HCD Act) amended section 3(b)(4) of the 1937 Act 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 or in prospective monthly amounts from supplemental security income (SSI) and social security benefits.

The April 5, 1995 interim rule also amended 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 1992 HCD Act. Finally, the interim rule made two technical corrections to HUD's existing regulations at 24 CFR parts 236 and 913. The April 5, 1995 interim rule described in detail the amendments to HUD's regulations.

III. Summary of Changes to the April 5, 1995 Interim Rule

The public comment period on the interim rule expired on June 5, 1995. A total of 12 comments were received. This final rule makes one change in response to public comment. Specifically, it amends the exclusion on compensation received from State or local job training programs to cover only incremental increases in income. HUD also determined that it was necessary to make several other revisions to the April 5, 1995 interim rule. For example, this rule consolidates and streamlines the nearly identical requirements of 24 CFR parts 813 and 913. This rule also revises the definitions of the terms "dependent" and "child care expenses."

The following section of the preamble describes the changes made by this final rule to the April 5, 1995 interim rule. The change made in response to public comment is discussed in section V of this preamble, which presents a summary of the significant issues raised by the public commenters on the April 5, 1995 interim rule, and HUD's responses to these comments. Section VI of the preamble discusses recent statutory requirements established by the Balanced Budget Downpayment Act, I (Pub. L. 104-99, approved January 26, 1996). Finally, section VII describes a correction made by this rule to the authority citations in 24 CFR part 5.

IV. Changes to the April 5, 1995 Interim Rule**A. Parts 215 and 236**

In response to President Clinton's regulatory reform initiative, HUD conducted a page-by-page review of its regulations to determine which could be eliminated, consolidated, or otherwise improved. As a result of this review, HUD, in a separate rulemaking, has removed 24 CFR part 215 and subpart A of 24 CFR part 236. (61 FR 14396, April 1, 1996.)

Part 215 codified HUD's Rent Supplement Payments Program. New rent supplement contracts were no longer authorized under the program. Accordingly, HUD has removed these obsolete provisions from title 24 of the Code of Federal Regulations. All of the existing projects and rent supplement contracts remain subject to the part 215

regulations through a savings clause contained in new § 200.1301.

Part 236 pertains to Mortgage Insurance and Interest Reduction Payments for Rental Projects. A moratorium on the issuance of commitments to insure new mortgages under part 236 was imposed on January 5, 1973. HUD has therefore removed subpart A of part 236 and replaced it with a savings clause.

The April 5, 1995 interim rule amended 24 CFR part 215 and subpart A of 24 CFR part 236 to add the nine new exclusions to annual income. Due to HUD's regulatory reform efforts, this rule finalizes these amendments by establishing new §§ 200.1303 and 236.3. These new sections make the annual income exclusions established by this final rule applicable to those program participants still subject to the requirements of 24 CFR part 215 and subpart A of 24 CFR part 236.

B. Consolidating Parts 813 and 913

1. Consolidation of Regulatory Requirements

The provisions of 24 CFR parts 813 and 913 are virtually identical. These two parts establish the definitions of "annual income", "adjusted income", and "total tenant payment", along with other related definitions and requirements for assistance under the 1937 Act. Part 813 applies to assistance administered under Section 8 of the 1937 Act. The requirements of part 913 apply to HUD's public housing programs. On February 9, 1996 (61 FR 5198), HUD, as part of its continuing regulatory-reform efforts, published a final rule creating a new 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. On February 13, 1996 (61 FR 5662), HUD published a final rule consolidating 24 CFR parts 812 and 912 in a new subpart D to part 5. Parts 812 and 912 described nearly identical general requirements for assistance under the 1937 Act. As was the case with parts 813 and 913, these requirements were originally set forth in separate parts of title 24 designated for different forms of assistance under the 1937 Act.

This final rule takes the next logical step in HUD's regulatory reinvention efforts by consolidating parts 813 and 913 in a new subpart F to 24 CFR part 5. Consolidation of these provisions in part 5 will eliminate redundancy in title 24 and assist in HUD's efforts to streamline the content of its regulations.

As a result of the consolidation of parts 813 and 913, this final rule makes a conforming amendment to 24 CFR part

960. Part 960 sets forth HUD's requirements for the admission to, and occupancy of, public housing. Section 960.208 repeats the utility reimbursement provisions currently located in 24 CFR part 913. This final rule amends § 960.208 to cross-reference to the consolidated requirements of new § 5.615.

2. Updated Introduction to the Definition of Annual Income

HUD's definition of "annual income" is currently set forth at §§ 813.106 and 913.106, and is consolidated by this rule at § 5.609. This final rule updates and clarifies the introductory paragraph of this definition, which presents an overview of annual income. For example, the revised introductory text now states that annual income includes amounts "monetary or not" that go to "or on behalf of" a family member and are received "from a source outside the family." These revisions do not signify a change in HUD's policy. Rather, the changes reflect the interpretation of annual income under which HUD and Public Housing Agencies (PHAs) are currently operating. Since the original publication of parts 813 and 913, HUD's day-to-day administration of these regulatory requirements has resulted in the clarification and interpretation of the definition of annual income. The changes made by this final rule merely update the definition to incorporate these clarifications.

3. Elimination of Unnecessary Regulatory Provisions

This rule also removes redundant or obsolete regulatory provisions from 24 CFR parts 813 and 913. For example, although parts 813 and 913 originally became effective on July 1, 1984, HUD chose to delay implementation of the definitions of "annual income" and "adjusted income" until October 1, 1984. Accordingly, §§ 813.110 and 913.110 set forth extensive transition provisions concerning the initial implementation of these definitions. These provisions have become obsolete and are not included in new 24 CFR part 5, subpart F.

Paragraphs (b) and (c) of § 913.107 set forth the total tenant payment provisions for public housing families whose initial lease was effective before August 1, 1982. These regulatory provisions require the gradual phasing-in of the total tenant payment established in 24 CFR 913.107(a) for public housing families whose initial lease was effective before August 1, 1982. There is a very small number of public housing families to whom these phase-in provisions might still apply.

Accordingly, HUD has decided not to include these provisions in subpart F of 24 CFR part 5. However, new § 5.613 contains a savings clause which states that the total tenant payment phase-in provisions will continue to be applicable to public housing families whose initial lease was effective before August 1, 1982.

This rule also removes provisions which merely repeat statutory language and replaces them with a citation to the specific statutory section. It is unnecessary to repeat statutory requirements in the CFR, since these requirements are otherwise accessible and binding. Furthermore, regulatory provisions which reiterate statutory language must be updated each time Congress amends the statute.

Accordingly, this final rule replaces the total tenant payment provisions located at paragraph (a) of §§ 813.107 and 913.107, and now consolidated at § 5.613, with a cross-reference to the identical language in the 1937 Act.

This rule also eliminates unnecessary repetition by removing the definitions of terms that are already defined in the 1937 Act or in part 5 and replacing them with simple cross-references.

4. Nonapplicability to HUD's Indian Housing Regulations

New 24 CFR part 5, subpart F does not incorporate the similar requirements for HUD's Indian housing programs. The Indian housing provisions continue to be set forth in 24 CFR part 950.

C. Revised Definitions of the Terms "Child Care Expenses" and "Dependent"

This final rule also revises the definitions of the terms "dependent" and "child care expenses." These amendments are necessary to clarify the exclusions to annual income established by the April 5, 1995 interim rule.

Sections 813.102, 913.102, and 950.102 currently define the term "adjusted income" to mean annual income less certain specified deductions. One of the permitted deductions is for "child care expenses" necessary to enable a family member to be gainfully employed or to further his or her education. The amount deducted, however, may not exceed the amount of income received from the employment made possible by the child care expense.

The April 5, 1995 interim rule amended the definition of annual income to exclude earned income of full-time students, other than the family head or spouse, in excess of \$480. Under the current regulations an employed full-time student would be

able to deduct the full amount of the earned income made possible by a child care expense, despite the fact that most of these earnings are already excluded from annual income. This final rule amends the definition of "child care expenses" to limit the deduction to the amount of employment income that is included in annual income.

The rule makes a second change to the definition of "child care expenses." As explained above, the only child care expenses which are currently excluded from annual income are those which permit a family member to be gainfully employed or to further his or her education. This final rule expands the scope of the definition to include those child care expenses which are necessary to permit a family member to actively seek employment. The revised definition will empower low-income families and broaden the economic opportunities which are available to them. Specifically, this change will provide family members with the additional flexibility they may require to obtain gainful employment.

Family members are also permitted to deduct \$480 for each "dependent." The definition of "dependent" excludes foster children. This is due to the fact that child foster care payments are already excluded from annual income. If HUD were to treat foster children as dependents, a family would be able to deduct the foster child payments which are already excluded from annual income. The April 5, 1995 interim rule excluded adult foster care payments from the definition of annual income. However, HUD inadvertently failed to amend the definition of "dependent" to exclude foster adults. This final rule corrects the oversight.

V. Discussion of Public Comments on the April 5, 1995 Interim Rule

A. General Comments on the Interim Rule

1. Rule Will Reduce Revenue

Comment. Two commenters were concerned about the drop in rent-generated revenue Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) (collectively referred to as HAs) would experience as a result of the April 5, 1995 interim rule. The commenters believed that the overall effect of the rule would be to reduce HA revenue.

HUD Response. HUD recognizes that in the short-term, these exclusions will reduce the revenues an HA receives from rent. HUD believes that any short-term loss in rental income will be offset by the long-term benefits of retaining higher income families in occupancy.

These exclusions are designed to benefit working families and families in transition from welfare to work. Many of the exclusions are temporary in nature, and others exclude only a portion of the family's income, with the remainder being considered in determining rent.

2. Administration of the Rule Presents Difficulties

Comment. One commenter believed the April 5, 1995 interim rule created administrative difficulties by not specifying that HAs implement the rule in the course of their normal annual review cycles. The commenter recommended that HUD permit HAs to make any required rental adjustments in the course of the first regular reexamination after the final rule's effective date.

The commenter also urged that the effective date of the final rule be set at the first day of the month. The April 5, 1995 interim rule had an effective date of May 5, 1995. The commenter believed that establishing the effective date at the first of the month would eliminate the computational problems resulting from the need to prorate a rent change for a partial month.

HUD Response. HUD has decided not to adopt the commenter's suggestions. Like the interim rule, this final rule requires that HAs amend their policies to incorporate all the required changes, and that HAs must then make whatever retroactive adjustments are necessary for families that have applied, been admitted, or been reexamined since the rule's effective date. Historically, HUD has implemented all changes to the definition of income in such a manner, so that the maximum benefit of the changes are realized.

However, HAs have the discretion to apply the exclusions to rent paid as of June 1, 1995 when determining retroactive payments. Since the April 5, 1995 interim rule was effective May 5, 1995, it is reasonable for HAs to make adjustments to rent as of June 1, 1995.

3. Formula Should Be Used To Determine Income Exclusion

Comment. One of the commenters believed that the April 5, 1995 interim rule should be revised to include an income exclusion formula. The commenter believed that such a formula could allow an initial fifty percent (50%) exclusion for income affiliated with each exclusionary item, but have each of the remaining sources of income tied to weighted percentages. The commenter suggested that the percentages be established according to the value of the subsidy in its importance toward elevating the tenant

or resident from dependence to total independence. The initial 50% exclusion when added to the other income sources could equal a 110% exclusion.

HUD Response. The suggested method is not in keeping with HUD's goals of both assisting families and providing HAs with less regulation. Additionally, such a formula would be administratively burdensome.

4. Rule Should Take Short-Term Employment Into Account

Comment. One of the commenters believed the April 5, 1995 interim rule unfairly penalized tenants taking advantage of short-term employment opportunities, such as those provided in occasional construction related jobs. The commenter pointed out that these opportunities did not fall under either the interim rule's definition of resident service stipends or employee training programs. The commenter recommended that the interim rule be amended to provide direction to HAs on how to treat income from these types of programs.

HUD Response. One of the goals of this final rule is to foster full-time, long-term employment by supporting a number of efforts, primarily training and education. Short-term employment only continues the dispiriting welfare-work-welfare cycle HUD has observed for many residents. HUD hopes that this rule will assist HAs in adding a training component to their existing efforts to create employment opportunities for residents. In many cases, only through additional training and education will long-term employment become a viable option.

5. Rule Should Not Apply to Section 8 Housing

Comment. One commenter believed that the income exclusions established by the April 5, 1995 interim rule should not apply to Section 8 housing. The commenter pointed out that public housing is not profit driven and the operating income is determined by tenant rent and performance funding subsidy. The commenter stated that Section 8 housing is profit driven and not dependent on tenant income. According to the commenter, this difference justifies denying the income exclusions to Section 8 housing residents.

HUD Response. The objective of this rule is to assist low income families. Accordingly, as the rule is directed to families and not programs, it would be inappropriate to limit benefits based on the program in which a family is assisted.

B. Comments on Specific Income Exclusions

1. Resident Service Stipend

Comment. The April 5, 1995 interim rule provided for the exclusion of resident service stipends from annual income. However, the rule limited the exclusion to stipends that did not exceed \$200 per month. Furthermore, the interim rule permitted only one resident service stipend per family member.

One commenter wrote that the interim rule's resident service stipend provisions created contradictory incentives for families. The commenter believed the provision was over-inclusive because it encouraged a single family to accumulate as many deductible "stipend" positions as family members. On the other hand, the commenter believed the provision was under-inclusive because it penalized individual residents who provided part-time services for which appropriate compensation might have exceeded \$200 per month. The commenter suggested that the interim rule be amended to permit the first \$200 of any resident service stipend to qualify for the exclusion. The commenter also felt the one stipend per family member limitation was "unnecessarily restrictive" and "administratively burdensome."

A second commenter believed the resident service stipend exclusion was vague. The commenter wrote that the interim rule neglected to address exactly how the resident service stipend would be documented. The commenter wondered whether a contract would be required for the resident service and whether board members would qualify for payment of services.

HUD Response. The intent of the resident service stipend exclusion is to exclude the stipends received by residents for performing a service, on a part-time basis, that enhances the quality of life in a housing development. Such services include, but are not limited to: fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, etc.

The parameters of the exclusion (i.e., the \$200 limitation, the one exclusion per family member restriction, and permitting the exclusion for as many family members that are eligible) were developed to ensure that the exclusion is utilized by residents who are truly performing a *service* for the development, and not actually *working* for the development without the benefits of legitimate employment (compensation based on wage rates, benefits, tax contributions, etc.). The

\$200 limit was established because, based on existing minimum wage rates and standard definitions of full-time and part-time employment, if a development is paying a stipend in excess of \$200 a month it may need to determine whether a wage-employment arrangement would be more appropriate than a stipend-for-service one. Further, HUD wishes to encourage all residents to contribute positively to their community, even if the residents are members of one family.

In response to the commenter who believed the resident stipend exclusion was vague, HUD notes that it is the responsibility of the individual HAs to establish such matters as whether a contract is required for resident services and whether board members qualify for payment for such services.

The resident stipend exclusion has successfully been in effect since its inclusion in a final rule published by HUD on August 24, 1994 (59 FR 43622). The April 5, 1995 interim rule only made a technical correction to the resident stipend income exclusion, expanding the scope to include all residents and not just resident leaders. Further, HUD wishes to note that neither the April 5, 1995 interim rule nor this final rule modify the existing exclusion of income earned by children (including foster children) under 18 years of age.

2. Adoption Assistance

Comment. The April 5, 1995 interim rule excluded payments received for the care of adopted children to the extent that the payments exceeded \$480 per adopted child. One commenter believed this provision discouraged adoption. Specifically, the commenter pointed out that the April 5, 1995 interim rule, when read in conjunction with HUD's definition of "adjusted income" at 24 CFR 813.102 and 913.102, treated the family with adopted children and the otherwise identical family with foster children as having the same "adjusted income" and, therefore, required both to pay the same rent. However, the commenter also noted that for the purpose of determining whether the family qualified for eligibility as a "low income" or "very low income" family under §§ 813.105 or 913.105, or whether the family qualified for a rent-hardship preference under §§ 960.215 or 982.213, the first \$480 of adoption subsidy payments would have been included in annual income whereas the first \$480 of foster-care payments would have been excluded from annual income.

The commenter recommended that the April 5, 1995 interim rule be amended to exclude the full amount of

adoption subsidy payments. The commenter also suggested that HUD modify the definition of "dependent" to exclude "children for whom the family receives an adoption subsidy payment", as well as foster children.

Another commenter feared that the adoption assistance exclusion lent itself to abuse by unscrupulous persons who might adopt multiple children as a means of obtaining extra income. This commenter believed the exclusion should be limited to one adopted child per family.

The second commenter also believed that the adoption assistance exclusion was vague concerning necessary documentation. The commenter suggested that the interim rule be amended to list the documents required for verification of the adoption assistance payments.

HUD Response. Adopted children already receive a \$480 dependent deduction when adjusted income is calculated for purposes of determining rent. If the remaining \$480 of earned income is excluded from annual income, the net effect, per adopted child, would no longer be \$0, but rather would become \$(480). Further, HUD does not believe that, in most instances, \$480 will change whether or not a family is eligible under the existing income limits. Also, HUD has little discretion to change the definition of dependent, as the definition of adjusted income is statutory.

In response to the second commenter, it is the responsibility of the family social service agency to ensure that the family adopting the child is able to care for the child appropriately, and is not merely adopting the child for some monetary gain. Limiting the exclusion to one adopted child per family could potentially cause problems, especially where families are adopting children who are siblings who need to remain together.

Finally, adoption assistance payments are well documented and therefore easily verified. In situations where residents do not provide the HA with the necessary documentation needed for verification, it is the responsibility of the HA to take appropriate action until such information is provided.

3. Full-Time Student Earned Income

Comment. The April 5, 1995 interim rule established an exclusion for income earned by full-time students similar to the exclusion for adoption assistance payments. Specifically, the interim rule excluded earnings in excess of \$480 for each full-time student 18 years of age or older, excluding the head of household and spouse. The same commenter who

believed adoption assistance should be completely excluded from income wrote to advocate the total exclusion of full-time student earned income. This commenter made the recommendation for the same reasons that it urged exclusion of adoption assistance.

Another commenter believed that the full-time student earned income exclusion should be limited by establishing an age eligibility requirement. The commenter feared that an open-ended exclusion easily lent itself to abuse by persons seeking additional income. The commenter pointed out that many health insurance policies contain such a requirement by limiting coverage to students 25 years of age or younger.

Another commenter believed that in order to "eliminate needless consternation and controversy" the April 5, 1995 interim rule should be amended to define "full time student."

HUD Response. In response to the commenter who recommended total exclusion of full-time student earned income, HUD reiterates its response above to the suggestion that adoption assistance payments be completely excluded. Like adopted children, full-time students, who are not the family head or spouse, already receive a \$480 dependent deduction for rent determination purposes. HUD has also not adopted the other two comments. HUD will not unnecessarily limit the benefit of this exclusion by imposing an age restriction. Further, the definition of "full-time student" can be found in new 24 CFR 5.603.

4. Adult Foster Care Payments

Comment. One commenter urged that the exclusion of adult foster care payments should be limited to a small number of adults per household. According to the commenter, this would prevent the warehousing of large numbers of adults in rooming houses with minimal service to foster care cases and maximum profits to providers.

HUD Response. HUD has not adopted the comment. The issue raised by the commenter is more of an occupancy and space standards issue than one concerning the definition of annual income. Any limitation on the number of foster adults is at the discretion of the HA. The HA has certain controls over who is, and is not, permitted to live in a unit.

5. State or Local Job Training Program Compensation

Comment. One of the commenters was concerned about the reduction in revenue resulting from the exclusion of compensation from State or local job

training programs. The commenter noted that a tenant's entitlement subsidies could be discontinued due to the income received from the on-the-job training or apprenticeship program. In such cases, these tenant rents could drop to \$0. The commenter recommended that the April 5, 1995 interim rule be amended to state that rents will be frozen at the amount charged at the time of entry into the training program.

Another commenter wrote that the exclusion should be modified in order to prevent abuse by tenants seeking to unscrupulously accumulate income. Specifically, the commenter suggested that the exclusion be amended to contain either a limitation on the number of training programs in which a family is permitted to participate and still qualify for an exclusion, or a time limitation beyond which the exclusion would no longer apply.

HUD Response. HUD has adopted the suggestion made by the first commenter. The exclusion on compensation from State and local job training programs has been amended to exclude only incremental increases in income resulting from the training program. In most cases this will have the effect of freezing the rent at the amount charged at the start of the job training program. In addition to addressing the concerns raised by the commenter, this revision will assure that this income exclusion is not more generous than that established by section 515(b) of the NAHA. The provisions of this final rule which implement section 515(b) limit the exclusion to incremental increases in earnings and benefits.

HUD has also made several clarifying changes to the exclusion on income received as a result of a State or local job training program. First, this final rule clarifies that the exclusion applies to all State and local job training programs, including training programs that are not affiliated with a local government. Further, this rule clarifies that the exclusion only covers income received during the period of the job training program.

HUD has not adopted the recommendations made by the second commenter. HUD believes that the limitations suggested by this commenter would be over-regulation that would defeat the exclusion's intent of assisting families in transition from welfare to work.

HUD wishes to note that the job-training program exclusion applies only to its public housing and section 8 programs. This exclusion has successfully been in effect since September 23, 1994. The April 5, 1995

interim rule only made technical corrections to this exclusion.

6. Employment Training Under Section 515(b) of the NAHA

Comment. One commenter questioned the logic of the exclusion set forth by the interim rule at 24 CFR 913.106(c)(13) (now 24 CFR 5.609(c)(13)) and paragraph (2)(xiii) of the definition of "Annual Income" in § 950.102. This exclusion implements section 515(b) of the National Affordable Housing Act of 1990 (NAHA). Section 515(b) excludes from annual income the earnings and benefits resulting from programs providing employment training in accordance with the Family Support Act of 1988, section 22 of the 1937 Act, or any comparable Federal, State, or local law. Section 515(b) excludes training income for the period of the program, plus a running 18 month period starting at the point the family member begins his or her first job after completing the program. The commenter wrote that by extending the exclusion period beyond the twelve months customarily utilized for rent determination, the interim rule overly complicated the administration of the exclusion.

HUD Response. HUD has not adopted the recommendations made by this commenter. As described above, the 18 month exclusion period is prescribed by statute and HUD has no authority to adjust the length of the exclusion. HUD wishes to clarify several matters relating to this exclusion. First, the exclusion is separate from the State and local job training program exclusion described previously in this preamble. Secondly, the provisions of this final rule which implement section 515(b) of the NAHA apply only to HUD's public housing and Indian housing programs. Further, the exclusion applies only to those job training programs which meet the criteria set forth in those implementing regulatory provisions. Finally, the exclusion only covers incremental increases in income resulting from participation in the job training program.

7. Property Tax Rebates

Comment. One of the commenters wrote that the property tax rebate exclusion was in need of clarification. The commenter noted that the preamble to the April 5, 1995 interim rule referred to an exclusion of rent "credits." (60 FR 17388, 17389). However, the commenter also pointed out that the regulatory language made no mention of rent credits, but referred to amounts received by the family in the form of "refunds or rebates." Since rent credits are not the

same as property tax rebates, the commenter believed greater definition was needed in order for the exclusion to be applied correctly.

Two commenters believed the tax rebate exclusion was overly broad, and permitted tenants to benefit from improperly received rebates. The commenters wrote that in certain States, public housing residents are not eligible for tax rebates, because the HAs do not pay taxes. Therefore, the commenters recommended that the April 5, 1995 interim rule be amended to include improperly received rebates in income.

HUD Response. HUD wishes to clarify that the property tax rebate exclusion applies to tax refunds or rebates. The exclusion does not apply to rent credits. As the commenter noted, the regulatory text of the April 5, 1995 interim rule utilized the term "refunds or rebates." This final rule adopts the term without change.

HUD decided to implement the tax rebate exclusion in order to support State initiatives designed to benefit low income families. If, based on State regulations, individuals are not eligible for such a benefit, or are receiving the benefit in error, it is the responsibility of the State agency administering the program to make the necessary adjustments.

8. Homecare Payments for the Disabled

Comment. One of the commenters believed the income exclusion for home care payments was lacking in clarity. The commenter suggested that the April 5, 1995 interim rule be amended to define the terms "developmentally disabled children" and "adult family members."

HUD Response. There is no need for HUD to define these terms, as they are defined by the State program providing the payments. If the family is receiving such a payment from the State because a family member meets the criteria of the definition, the HA should consider the family eligible for the exclusion.

9. Deferred Periodic Amounts of Supplemental Security Income and Social Security Benefits

Comment. One of the commenters questioned why the April 5, 1995 interim rule did not also exclude deferred periodic amounts received in a lump sum from sources other than Supplemental Security Income and Social Security Benefits. The commenter believed this unnecessarily complicated implementation of the rule.

HUD Response. This exclusion implements section 103(a)(1) of the 1992 HCD Act, which amended section 3(b)(4) of the 1937 Act to exclude from

annual income "any amounts which would be eligible for exclusion under section 1613(a)(7) of the Social Security Act." The amounts referred to are deferred periodic amounts from supplemental security income and social security benefits. Deferred periodic amounts received in a lump sum or in prospective monthly amounts from Supplemental Security Income and Social Security Benefits are excluded, because that is what the law provides. Deferred periodic amounts received in a lump sum or prospective monthly amounts from other sources are counted as income because they are not covered by a statutory exclusion.

VI. The Balanced Budget Downpayment Act, I

The Balanced Budget Downpayment Act, I (Pub. L. 104-99, approved January 26, 1996), also known as the Continuing Resolution (CR), contained three provisions which impact this final rule. Section 402(a) of the CR provided that HAs must establish minimum rents, "[n]otwithstanding sections 3(a) and (8)(o)(2)" of the 1937 Act.¹ The second provision, section 402(b) of the CR, amended section 3(a)(2) of the 1937 Act to permit HAs to adopt ceiling rents. Section 402(c) of the CR amended section 3(b)(5) of the 1937 Act to permit HAs, at their expense, to establish additional deductions from annual income in deriving adjusted income.

Section 402(f) of the CR makes all three of the provisions described above effective only for Fiscal Year (FY) 1996. With respect to the first two provisions, HUD has decided not to amend its regulations to incorporate these statutory changes. HUD has implemented these changes made by the CR through other, non-regulatory means.

On August 30, 1996 (61 FR 46344), HUD published for public comment an interim rule implementing section 402(c) of the CR. The August 30, 1996 interim rule amended 24 CFR parts 913 and 950 to permit HAs to establish exclusions to earned income as a means of attracting more tenants with earned income. Although section 402(c) of the CR expired at the end of FY 1996 (September 30, 1996), a change made by the Secretary in the definition of income permitting an exclusion for earned

¹This minimum rent provision was later amended by section 230 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRA) (Pub. L. 104-134, approved April 26, 1996). Section 230 of OCRA provided that the Secretary of HUD may waive the minimum rent requirement established by section 402 of the CR in order "to provide a transition period for affected families."

income can have longer lasting effect. The Secretary exercised this authority in publishing the August 30, 1996 interim rule. New subpart F to 24 CFR part 5 incorporates the interim amendment to part 913 at § 5.609(d).

In the interest of obtaining the fullest participation possible in determining the factors that should be considered in an HA's determination to adopt an optional earned income exclusion, HUD welcomes public comment on the amendments made by the interim rule. The public comment deadline is October 29, 1996. The August 30, 1996 interim rule contains a detailed discussion of the interim amendments and provides the address where comments should be submitted.

VII. Updating the Authority Citations for 24 CFR Part 5

HUD established 24 CFR part 5 to set forth cross-cutting definitions and program requirements. Since publication of the February 9, 1996 final rule establishing subpart A of 24 CFR part 5, HUD has issued additional rulemakings establishing new subparts to part 5. This final rule, for example, creates a new subpart F. The establishment of these additional subparts has caused the original authority citation set forth in 24 CFR part 5 to become outdated. This final rule updates and corrects the authority citations in 24 CFR part 5.

VIII. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review. This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the final 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 D.C.

This final rule was appropriate for review under E.O. 12866 because it is a significant regulatory action of HUD but not an "economically significant" regulatory action under Executive Order 12866. This final rule will not have an annual effect on the economy of \$100 million or more, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost estimate prepared by HUD at the interim rule stage concluded that the cost of the amendments would not exceed \$10 million. A copy of the cost

estimate is available for public inspection in the office of the Department's Rules Docket Clerk at the above address.

Unfunded Mandates Reform Act. The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

Environmental Impact. A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. This Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of General Counsel, the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

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

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

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule adds nine exclusions to HUD's definition of

annual income. 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.

This rule also consolidates the nearly identical provisions of 24 CFR part 813 and 913 in a new subpart F to 24 CFR part 5. The consolidation of these regulatory requirements merely eliminates unnecessary repetition from title 24. New subpart F to 24 CFR part 5 does not affect or establish any substantive policy. Accordingly, it will not have an economic impact on small entities.

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

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

24 CFR Part 200

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

24 CFR Part 236

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

24 CFR Part 813

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

24 CFR Part 913

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

24 CFR Part 950

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 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, subtitle A and chapters II, VIII, and IX of title 24 of the Code of Federal Regulations are amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 is revised to read as follows:

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

Subpart B—[Amended]

2. A new authority citation to subpart B is added to read as follows:

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

Subpart C—[Amended]

3. A new authority citation to subpart C is added to read as follows:

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

Subpart E—[Amended]

4. A new authority citation to subpart E is added to read as follows:

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

5. A new subpart F is added to read as follows:

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations for the Public Housing and Section 8 Programs

Sec.

5.601 Purpose and applicability.

5.603 Definitions.

5.605 Overall income eligibility for admission.

- 5.607 Income limits for admission.
 5.609 Annual income.
 5.611 Adjusted income.
 5.613 Total tenant payment.
 5.615 Utility reimbursements.
 5.617 Reexamination and verification.

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

Subpart F—Income Limits, Annual Income, Adjusted Income, Rent, and Examinations for the Public Housing and Section 8 Programs

§ 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) 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.

(d) 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.

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.

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 appropriate, the term "owner" shall also include a "borrower" as defined in 24 CFR part 885.

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.

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 the unit, if applicable, exceeds the total tenant payment for the family occupying the unit.

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.

§ 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.

§ 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.)

§ 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 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, and resident initiatives coordination. 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 and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(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:

(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.

(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.

§ 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 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.

(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 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 composition at least annually. The "effective date" of an examination or reexamination 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 of 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 part or applying for assistance.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2577-0083.)

PART 200—INTRODUCTION TO FHA PROGRAMS

6. The authority citation for 24 CFR part 200 continues to read as follows:

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

Subpart W—Administrative Matters

7. A new § 200.1303 is added to read as follows:

§ 200.1303 Annual income exclusions for the rent supplement program.

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

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

8. 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).

9. A new § 236.3 is added to subpart A to read as follows:

§ 236.3 Annual income exclusions.

The exclusions to annual income described in 24 CFR 5.609(c) apply to those program participants governed by the regulations at subpart A of 24 CFR part 236 in effect immediately before May 1, 1996 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499), in lieu of the annual income exclusions described in 236.3(c) (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499).

PART 813—[REMOVED]

10. Part 813 is removed.

PART 913—[REMOVED]

11. Part 913 is removed.

PART 950—INDIAN HOUSING PROGRAMS

12. The authority citation for 24 CFR part 950 continues to read as follows:

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

- 13. Section 950.102 is amended by:
 - a. Revising paragraphs (5) and (6) to the definition of "Adjusted income";
 - b. Revising paragraphs (1)(iv), (1)(v), and (2) of the definition of "Annual Income";
 - c. Revising the definition of "Child care expenses"; and
 - d. Revising the definition of "Dependent" to read as follows:

§ 950.102 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 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 (2)(xiv) of this definition);
 - (v) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in 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 (except as provided in 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) Amounts received under 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 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;
- (E) 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;

(ix) Temporary, nonrecurring or sporadic income (including gifts);
 (x) 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 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 Act (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 family member participates in a program described in

this definition, 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 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;

(xiv) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;

(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 Act. 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.

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, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of countable income received from such employment.

* * * * *

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 disabled person or handicapped person, or is a full-time student.

* * * * *

§ 950.103 [Removed]

14. Section 950.103 is removed.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

15. The authority citation for 24 CFR part 960 continues to read as follows:

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

16. Section 960.208 is revised to read as follows:

§ 960.208 Rent.

The amount of rent payable by the tenant to the PHA shall be the Tenant Rent, as defined in 24 CFR part 5, subpart F.

Dated: September 6, 1996.

Henry G. Cisneros,

Secretary.

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