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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 574, 960, 966, 982, 983, and 990

[Docket No. FR 5743-P-01]

RIN 2506-AC38

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: Section 243 of the Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act), authorized HUD to implement certain statutory changes to the United States Housing Act of 1937 (1937 Act) made by the 2014 Appropriations Act through notice, followed by notice and comment rulemaking. Notices implementing the changes were published on May 19, 2014, and June 25, 2014. Consistent with statutory direction, this proposed rule commences the rulemaking process to codify in regulation the statutory changes made to the 1937 Act by the 2014 Appropriations Act and to solicit comment on HUD's implementation of these changes through the published notices. HUD intends to address the FY14 provision on consortia through separate rulemaking.

In addition, this rulemaking also proposes changes to streamline regulatory requirements pertaining to certain elements of the Housing Choice Voucher (HCV), Public Housing (PH), and

various multifamily housing (MFH) rental assistance programs; to reduce the administrative burden on public housing agencies (PHAs) and MFH owners; and to align, where feasible, requirements across programs. One of the proposed changes would also affect the HOME Investment Partnerships program, Continuum of Care program, and the Housing Opportunities for Persons With AIDS (HOPWA) program which are administered by HUD's Office of Community Planning and Development.

DATES: Comment Due Date: **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. There are two methods for submitting public comments.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For questions, please contact the following people (none of the phone numbers are toll-free):

HOME program: Marcia Sigal, 202-402-3002.

HOPWA: Will Rudy, 202-402-1934.

Office of Special Needs Housing programs: Brett Gagnon, 202-402-3509.

Multifamily Housing programs: Claire Brolin, 202-708-3000.

Housing Choice Voucher program: Becky Primeaux, 202-402-6050.

Public Housing program: Todd Thomas, 202-402-5849.

Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800-877-8339. Any of the above-listed contacts

may also be reached via postal mail at the following address: Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC, 20410.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years and in accordance with Executive Order 13563 (Improving Regulation and Regulatory Review)¹ and several HUD-initiated streamlining initiatives,² HUD solicited recommendations from program participants on how program operations could be streamlined to reduce costs and enhance efficiency, while still maintaining HUD's core program oversight functions (e.g., reducing improper payments,³ etc.). With respect to public housing programs, HUD received input from national and local industry groups, individual public housing agencies (PHAs), and Moving-to-Work (MTW) agencies, among others. Where possible, HUD has sought to streamline requirements across programs, with a particular focus on aligning program requirements across the public housing and Section 8 (tenant- and project-based) portfolios. This proposed rule therefore includes several provisions where the requirements of programs operated out of the Office and Public and Indian Housing are aligned with the requirements of project-based Section 8 programs operated out of HUD's Office of Housing.

In response to HUD's solicitation of comments, HUD received many recommendations. Among these recommendations, HUD specifically examined recommendations to relieve the administrative burden on PHAs and MFH owners while maintaining important tenant protections

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

² HUD's Delivering Together Initiative was started to reduce burdens on public housing agencies and improve cross-program collaboration (see <http://www.hud.gov/offices/hsg/mfh/trx/meet/2011tracsindustrybriefing.pdf>). The Public Housing Administrative Reform Initiative sought to identify public housing administrative processes that could be streamlined (see http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/phari).

³ The Rental Housing Integrity Improvement Project (see http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip) is a strategy designed to reduce income and rent calculation errors and improper payments that result from such errors.

and oversight practices. Some of the recommendations required statutory change and were included in recent budget proposals; several of the recommendations were enacted in FY14 and are being implemented through this proposed regulation. Others have been implemented through notice; for example, Notice PIH 2013–03⁴ (extended by Notice PIH 2013–26) provides temporary compliance assistance to PHAs through several provisions that are proposed to be made permanent through this rulemaking. Some of the statutorily permitted recommendations lacked authority to be implemented by notice and are included in this proposed rule.

In addition to the PH and HCV programs, this proposed rule would affect the following MFH programs, as of the date of this proposal:

A. Project-Based Section 8 (New Construction, State Agency-Financed, Substantial Rehabilitation, Rural Housing Services, Loan Management Set-Aside, and Property Disposition Set-Aside).

B. Section 8 Moderate Rehabilitation.

C. Rent Supplement Program.

D. Section 202 Supportive Housing for the Elderly (including PAC and PRAC).

E. Section 811 Supportive Housing for Persons with Disabilities (including PRAC and PRA).

F. Section 235.

G. Section 236.

H. Section 221.

The proposed rule would also affect certain programs administered by the Assistant Secretary for Community Planning and Development: HOME Investment Partnerships program (HOME) and the Continuum of Care program. HUD is also taking the opportunity afforded by

⁴ See <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2013-03.pdf>.

this proposed rule to relocate HOPWA program requirements currently codified in 24 CFR part 5 to the main HOPWA program regulations at 24 CFR part 574. Although the substance of these provisions would not be revised, the proposed relocation will improve the clarity of the program regulations by locating all HOPWA regulatory requirements in a single part of the Code of Federal Regulations. The section-by-section summary of this proposed rule is organized by the program(s) the proposed rule would affect. Section A addresses proposed regulatory changes that cross all programs (e.g., HCV, MFH, and PH). Section B presents proposed changes that would affect the administration of both the HCV and PH programs. Section C contains proposed changes that affect the PH program only. Changes proposed only to the HCV program are in section D.⁵ The proposed regulatory changes are then presented in order by section number.

II. This Proposed Rule—Section-by-Section Proposed Changes

A. HCV, MFH, and PH Program Regulations

Verification of Social Security Numbers (§ 5.216)

Under current regulations, most applicants are required to have a Social Security Number (SSN) at move-in. Absent a regulatory waiver, this requirement results in an applicant family being denied assistance if the addition of a child occurs in close proximity to the applicant's move-in date and the family is unable to obtain a SSN for the child, due to circumstances beyond its control. By contrast, HUD regulations provide for the addition to a participant family of a new household member under the age of 6 years who has no assigned SSN.

HUD proposes to align the requirements across applicant and participant households with respect to new household members under the age of 6 years who lack SSNs. Specifically, HUD proposes to authorize applicant households to become program participants even if a child under the age of 6 years is added to the household within the 6-month period prior to the household's

⁵ One of the proposed changes also affects the CPD programs listed earlier.

date of admission and that child has not yet been issued an SSN. The household would have 90 days from the date of move-in to provide the documentation evidencing issuance of an SSN. As is the case with program participants, an extension of one 90-day period would be required for assistance applicants under certain circumstances.

Definition of Extremely Low–Income Families (§§ 5.603, 960.102)

HUD’s 2014 Appropriations Act⁶ defines the term “extremely low–income family” to mean a very low–income family whose income does not exceed the higher of 30 percent of area median income or the poverty level. This rule would amend § 5.603 to include the revised definition of an extremely low–income family. This definition applies to all programs assisted under the 1937 Act.

In addition to the change in the definition, this rule proposes to correct some improper cross-citations in §§ 5.603 and 960.102, but proposes no substantive changes associated with these corrections.

Use of Actual Past Income (§ 5.609)

HUD’s current regulations define “annual income” to mean income projected to be received in the 12 months following admission or the annual reexamination date. The process of projecting income introduces the potential for error.

This rule proposes to allow PHAs and MFH owners to define annual income as either actual past income or projected income. Actual past income would be based on amounts received prior to admission or the annual reexamination effective date and would therefore simply exclude the additional step of projecting income based on this information.

⁶ HUD’s 2014 Appropriations Act is Title II of Division L of Public Law 113-76, 128 Stat. 5, approved January 17, 2014. See general provision section 238 of this Act at 128 Stat. 635.

For PHAs, whichever definition is chosen for either the HCV or PH program must be applied to all families in the respective program. Likewise, a MFH owner must apply the same definition of annual income for all families in a single property.

If a PHA or MFH owner chooses to define annual income as actual past income, then it may not adopt the option provided in the proposed revisions to §§ 5.657, 960.257, and 982.516 to provide for the streamlined annual reexamination of fixed-income families (see below). In other words, if a PHA or MFH owner adopts the streamlined annual reexamination for families on fixed incomes, below, then it must use projected income to determine annual income. Also, the PHA must use projected income if the family makes a request (for example the family may have experienced a decrease in income that would result in a lower family payment than would be calculated if income is defined as actual past income).

Exclusion of Mandatory Education Fees from Income (§ 5.609(b)(9))

Current regulations provide that education assistance in excess of amounts needed for tuition is to be counted as income for the purposes of determining whether an individual is eligible to receive assistance. However, in recent years, appropriations acts have also excluded from income amounts needed to pay required fees charged to students as part of a growing trend among institutions of higher education moving from a traditional tuition-only structure to a structure of tuition and fees. Fees often include, but are not limited to, student service fees, student association fees, student activity fees, and laboratory fees.

HUD believes that including many of these fixed fees within the definition of tuition, in accordance with statutory instructions in recent years, will increase opportunities for its participants to further their education. Therefore, HUD is amending the definition of income with respect to higher education costs pursuant to the recent statutory changes.

Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516)

PHAs and MFH owners are statutorily required to verify income and calculate rent annually, including for families on fixed incomes. The requirement to undertake the complete process for income verification and rent determination for families on fixed incomes is not necessary given the infrequency of changes to their incomes. Further, this requirement consumes considerable staff time and resources.

HUD proposes to simplify the requirements associated with determining the annual income of families on fixed incomes by allowing PHAs and owners to opt to conduct a streamlined annual reexamination of income for families when 100 percent of the family's income consists of fixed income sources. In a streamlined annual reexamination, PHAs and owners will recalculate family incomes by applying a published cost-of-living adjustment (COLA) for the source of income to the previously verified income amount. If COLA information is not publicly available and cannot be provided by the tenant through a document generated by a third party, then the PHA or owner must follow the standard verification process to determine the appropriate adjustment for the fixed-income source. If a family has several sources of fixed income, then the PHA or owner must apply the respective COLA or verify the adjustment for each source.

Calculating adjustments to annual income (e.g., medical deductions, child care deductions) is still required as part of the streamlined annual reexamination of income. PHAs must follow the requirements related to deductions for such expenses, including third-party verification of these deductions. Furthermore, PHAs using the streamlined annual reexamination of income may not exercise the option to use actual past income to determine annual income under § 5.609 (instead, they must use projected income).

B. HCV and PH Program Regulations

Utility Reimbursements (§§ 960.253, 982.514)

As required by § 5.632 of the current regulations, where tenants pay for their utility usage, PHAs must reimburse tenants if the utility allowance exceeds the total tenant payment. HUD's public housing regulations at § 960.253 specify the conditions under which a utility reimbursement must be paid but do not specify how frequently such reimbursement must be made. HUD's HCV regulations at § 982.514, however, require voucher agencies to pay any utility reimbursement on a monthly basis. As a result, voucher agencies may have to process small monthly checks and expend postage to mail them to voucher holders, which may constitute an administrative and financial burden.

For both the public housing and HCV programs, this rule proposes to permit PHAs to make reimbursements of \$20 or less (per quarter) on a quarterly basis, in order to eliminate the burdensome process of processing and mailing monthly reimbursement checks. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement.

Earned Income Disregard (§§ 5.617, 574.305, 960.255)

HUD's regulations at § 5.617 and § 960.255 establish the earned income disregard (EID), which permits certain tenants of public housing and persons with disabilities participating in the HCV and certain CPD programs⁷ to accept a job without having their rent increase right away due to the increase in earned income. The EID is available for a total of 24 months, but those months can be spread across 48 months to account for intermittent job losses. In addition, PHAs

⁷ The CPD programs are: HOME Investment Partnerships Program (24 CFR part 92), Housing Opportunities for Persons with AIDS (24 CFR part 574, and Continuum of Care program (24 CFR part 578). Current regulations refer to the Supportive Housing program, and HUD is proposing to update that reference to the Continuum of Care program.

are required to fully exclude income for the first 12 months of EID, and to exclude only 50 percent for the last 12 months. Tracking employment for a 48-month period and determining how much to exclude depending on the month can be burdensome to PHAs.

HUD proposes to retain the current framework for the earned income disregard in § 5.617 as applied to the HOPWA program and to relocate these requirements to a new § 574.305 in the HOPWA regulations in 24 CFR part 574. These requirements will continue to apply to qualified families, defined as those families that reside in HOPWA-assisted housing (including tenant-based rental assistance funded under HOPWA). HUD is retaining the current framework for HOPWA, while changing it for other programs, because under the HOPWA program every assisted household will have at least one family member that is a person with a disability (defined at § 5.403) and, therefore, will be affected by this rulemaking. If the new EID requirements were applied to the HOPWA program, it would disproportionately affect the HOPWA program portfolio and adversely affect HOPWA program participants. At the same time, however, HUD supports retaining the existing EID rules for the HOPWA program. For these reasons, § 574.305 is proposed to be created to retain the existing EID rules for the HOPWA program.

For programs other than HOPWA, HUD proposes to limit the EID to 24 consecutive months from the date that a participant qualifies for the EID. The rule would maintain the full exclusion for the first 12-month period, provided the eligible family member remains continually employed for such period. For the second 12-month period, the rule would provide PHAs with the discretion to phase in a rent increase, disregarding not less than 50 percent of the excluded amount in determining a family's rent, but again only if the eligible family member remains continually employed. After the expiration of the consecutive 24-month period during which a

family has remained continually employed, the EID would terminate. These changes would eliminate the burden on PHAs of having to track employment starts and stops over a 48-month period.

HUD notes that, pursuant to section 3(b)(5)(B)(ii) of the 1937 Act (42 U.S.C. 1437a(b)(5)(B)(ii)), PHAs have wide discretion to exclude earned income in determining adjusted income for families residing in public housing. At their discretion, PHAs could therefore adopt policies that continue an earned income exclusion for such families beyond the point at which the EID terminates.

Family Declaration of Assets under \$5,000 (§§ 960.259, 982.516)

Families are required to report all assets annually. The amount of interest earned on those assets is included as income used to calculate the tenant's rent obligation. Tenants with assets below \$5,000 typically generate minimal income from these assets, which results in small changes, if any, to tenant rental payments. PHAs spend significant time verifying such assets.

HUD proposes that, for a family that has net assets equal to or less than \$5,000, a PHA, at both admission and recertification, may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount will be included in the family's income.

C. PH Program Regulations

Public Housing Rents for Mixed Families (§ 5.520(d))

a. When calculating prorated rents for families that include members both with and without citizenship or eligible immigration status, § 5.520(d) requires PHAs to determine the maximum rent by establishing the 95th percentile of all total tenant payments (TTPs) for each

bedroom size. To do this, PHAs have to take the full set of TTPs, order them from highest to lowest, and identify the numeral below which 95 percent of TTPs fall.

This rule would require PHAs to use instead the established flat rent applicable to the unit, significantly reducing the administrative burden for PHAs.

b. Under the current method of calculating prorated rents for mixed families, when a mixed family's TTP is greater than the maximum rent, the mixed family ends up paying less under proration than would a family where all members are eligible for assistance.

This rule proposes to amend the regulation to use the mixed family's TTP when TTP exceeds the flat rent, eliminating this discrepancy.

Note: Several of the proposed changes to this provision simply eliminate references to the legacy Section 8 Rental Certificate program. The only substantive changes pertain to the method of prorating assistance for the public housing program.

Flat Rents (§ 960.253)

The 2014 Appropriations Act requires PHAs to establish flat rents equal to no less than 80 percent of the applicable Fair Market Rent. In the event that implementation of this requirement would increase a family's rent by more than 35 percent, the PHA must phase in the flat rent as necessary to ensure that a family's rental payment does not increase by more than 35 percent in any one year. This proposed rule would update the current regulations to reflect the new statutory requirements and provide additional information to PHAs on how to implement the new requirements, including details on how tenant-paid utilities affect flat rents and the information about rent options a PHA must provide to a family paying a flat-rent.

In addition, HUD's current regulation at § 960.253(d) permits PHAs to set a ceiling limit on rents for a period of three years from October 1, 1999, if the PHA had previously established

ceiling rents. After that time, PHAs were required to adjust the ceiling rent to be equal to the flat rent for a unit. Given that the 3-year time period has expired and the flat rent provisions now determine a maximum rent, all ceiling rents must be set equal to flat rents. To further clarify, this proposed rule would apply the requirements for establishing and updating flat rents to the requirements for ceiling rents.⁸

Tenant Self-Certification for Community Service Requirements (§§ 960.605, 960.607)

Under HUD's current public housing regulations, PHAs are required annually to review and determine family member compliance with the community service requirement. For any qualifying activity administered by a third party that a family states it has completed, the PHA is required to obtain third-party verification. Although HUD's regulations at § 960.607(a) require family members who complete qualifying activities administered by a third party to obtain a certification signed by the third party, in many cases this requirement is not met, resulting in PHAs having to request third-party verification from organizations that either fail to maintain adequate records or are simply unresponsive. The effort to obtain third-party verification of compliance consumes considerable time and resources that could be directed to other PHA activities, and, in some cases, delays the recertification process.

HUD proposes to allow PHAs to accept a tenant's signed self-certification of compliance with the community service requirement. Any self-certification must include details (including contact information) on what the activity was and where it was completed and a certification that the statement is true. Further, PHAs are encouraged to undertake periodic quality assurance reviews of self-certifications to test for fraudulent certifications.

⁸ HUD notes that section 238 of the Department of Housing and Urban Development Act, 2015, as part of the Fiscal Year (FY) 2015 Omnibus Consolidated and Further Continuing Appropriations Act (Public Law 113-235 (further revises section 3(a)(2)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437a(a)(2)(B)(i))), pertaining to flat rents. As to not delay issuance of this proposed rule, HUD will address the further revision in a separate proposed rule.

Public Housing Grievance Procedures (§§ 966.52 through 966.57)

Under HUD's current regulations, many portions of the grievance process are repetitive or overly prescriptive for PHAs. Through this rule, HUD proposes to eliminate the repetitive and overly prescriptive requirements in the regulations, and instead provide PHAs with additional flexibility to include procedures in the mandatory Admissions and Continued Occupancy Policies developed by each PHA. Procedures proposed to be streamlined are informal settlements (§ 966.54), grievance procedures for failure to request a hearing and requiring escrow deposits (§ 966.55), and matters relating to transcripts, copies, and the conduct of the hearing (§§ 966.56 and 966.57). Requirements relating to scheduling and location formerly contained in § 966.55 are proposed to be merged into § 966.56.

HUD also proposes to permit PHAs to establish expedited grievance procedures and eliminates a separate category of hearing panel by redefining "hearing officer" to include the possibility of more than one person hearing a complaint.

Limited Vacancies (§ 990.150)

Under current regulations, HUD is required to provide operating subsidy for a limited number of vacant units under an Annual Contributions Contract. The proposed rule would clarify that the number of vacant units eligible for operating subsidy shall be not more than 3 percent of the total units, on a project-by-project basis.

Section D: HCV Program Regulations

Start of Assisted Tenancy (§ 982.309)

Under current regulations, there is no option for PHAs to adopt policies regarding the date when a tenant may move into an assisted unit once the unit is ready for move-in.

HUD proposes to allow PHAs to limit move-ins to certain days of the month, such as the first day of the month. This would streamline administration of move-ins for some PHAs, reduce the need for pro-rated checks and possibly the number of checks issued, and provide Housing Assistance Payment (HAP) savings by eliminating overlapping HAP payments.

Biennial Inspections and the Use of Alternate Inspection Methods (§§ 982.405, 983.103)

The 2014 Appropriations Act authorizes PHAs to comply with the requirement to inspect HCV units during the term of a HAP contract by inspecting such units not less than biennially rather than annually to assure compliance with HUD's housing quality standards. To avoid duplication of effort, for example where an HCV-assisted tenant resides in a property inspected under another program (for example, the Low Income Housing Tax Credit program), the law authorizes a PHA to comply with the biennial inspection requirement by relying upon an inspection performed pursuant to such other program. Finally, the law authorizes the Secretary to adjust the frequency of inspections for mixed-finance properties assisted with project-based vouchers where inspections performed under such other program take place more or less frequently than biennially.

This rule proposes to update HUD's regulations to reflect the statutory changes and to provide details on how PHAs may use the new flexibilities. PHAs will be required to obtain copies of reports of these inspections and will be prohibited from relying upon such inspections if such copies may not be obtained. In addition, because section 8(o)(13)(F) of the 1937 Act states that the inspection requirements of section 8(o)(8) apply to the PBV program, this rule proposes to update the PBV inspection regulations (§ 983.103) to reflect the new statutory authority in section 8(o)(8).

Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

HUD proposes to allow PHAs the option of charging a reasonable fee to an owner if the owner indicates that an HQS violation is fixed, but a reinspection proves that the violation has not yet been fixed. This fee would not be permitted if the reinspection confirms that previous violations have been fixed but also reveals new HQS violations. The fee would pertain solely to owner obligations under § 982.404(a) and not to family obligations under § 982.404(b).

Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

Current regulations require a PHA to request a waiver from a HUD Field Office for an exception payment standard above 110 percent of the fair market rent (FMR) to provide a reasonable accommodation for a family that includes a person with a disability. This process takes considerable administrative time for the PHA and, in some cases, the processing time for the waiver prevents the family from leasing the unit.

HUD proposes to allow PHAs to approve, if they so choose, a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with a disability. This proposed streamlining provision would allow a PHA to establish a payment standard within limits currently permitted but designated for approval only by a HUD Field Office. For any voucher unit assisted under the program, PHAs would still be required to perform a rent reasonableness determination in accordance with section 8(o)(10) of the 1937 Act and HCV program regulations. Therefore, PHAs that utilize this provision must maintain documentation that the PHA performed the required rent reasonableness analysis.

Family Income and Composition: Regular and Interim Examinations (§ 982.516)

With respect to interim examinations, current regulations require PHAs to conduct a reexamination of income whenever a family member with income is added to a family

participating in the voucher program. Regulations for the public housing program (at § 960.257) are less prescriptive.

In the interest of streamlining requirements across programs, HUD proposes to revise § 982.516 to align the regulatory language more closely with § 960.257, which will facilitate HUD's ability to issue guidance on interims that applies uniformly to the public housing and voucher programs.

Utility Payment Schedules (§ 982.517)

a. Size and type of units. HUD's current regulations require PHAs to establish a utility allowance based on size and type of units in a given locality. Requiring PHAs to establish a utility allowance based on both of these factors increases the complexity involved in developing a utility allowance schedule.

HUD proposes to require that the allowance be based on the size of the unit and either the type of the unit, as is currently required, or a streamlined version of "unit type," limited to "attached" or "detached." In other words, PHAs would have the option to define unit type as either "attached" or "detached." For any family that would face a lower utility allowance because of this change to the schedule, the PHA must provide at least 60 days' notice before the revised utility allowance schedule may go into effect.

b. Size of dwelling units. HUD's current regulations require PHAs to use utility allowances for the size of the dwelling unit actually leased by the family. The 2014 Appropriations Act requires that the amount allowed for tenant-paid utilities not exceed the utility allowance for the family unit size as determined by the PHA. Therefore, HUD proposes to revise the regulations to conform to the statutory change.

The proposed rule would require PHAs to use the lesser of the two standards, unless the family is living in a larger unit as a result of a reasonable accommodation, in which case the PHA would be required to use the utility allowance for the size unit the family is actually leasing. Section 982.517(e) already requires a PHA to approve a higher amount than shown on the utility allowance schedule as a reasonable accommodation, so HUD is proposing no revision to that provision. The proposed rule also includes a clarifying change to § 982.402, cross-referencing § 982.517.

III. Specific Issues for Comment

While HUD solicits and welcomes comments on all aspects of this rule, HUD specifically seeks comment on the following:

1. Use of Actual Past Income (§ 5.609). Does this provision provide a clear streamlining benefit to PHAs? If not, what additional specific changes should HUD consider?

a. For PHAs that choose to use past income to determine annual income, does requiring the same time frame for all sources of income and expenses still provide for streamlining, or does this make the information collection and verification process too complex? If it does make the process too complex, what alternatives should be available?

b. Should PHAs be permitted to use past income for only some income sources, rather than for the entire program? For example, does past income only work for families with consistent income amounts? Or, does past income also work for families that have sporadic income?

c. What other types of income documentation should HUD permit PHAs to use to verify past income?

2. Earned Income Disregard (§§ 5.617, 960.255). Will the proposed changes to the earned income disregard reduce the administrative burden associated with implementing the EID? If not, what other or additional specific changes would facilitate administration of the EID?

3. Streamlined Annual Reexamination for Families on Fixed Incomes (§§ 5.657, 960.257, 982.516). In order to utilize these provisions, PHAs and MFH owners will be required to determine annually that family incomes consist solely of fixed-income sources. Consistent with the goal of streamlining, by what means could PHAs and MFH owners assure that such families do not have other sources of income?

4. Utility Reimbursements (§§ 960.253, 982.514). Will the proposed changes to the required frequency of utility reimbursement provide regulatory relief to PHAs? If not, then what changes would provide such relief?

5. Start of Assisted Tenancy (§ 982.309). HUD is concerned that this proposed change may have the unintended consequence of limiting tenant choice. Does the provision provide enough of a benefit to PHAs to merit inclusion in this streamlining regulation?

6. Biennial Inspections and the Use of Alternate Inspection Method (§ 982.405). Where an inspection conducted under an alternative method results in a finding that a property is out of compliance with the standard particular to that method, should HUD still require PHAs to inspect units using HQS, or should HUD allow PHAs to rely upon remedial actions taken to bring the property into compliance with the standards under the alternative inspection protocol? In the latter instance, if HUD were to adopt such a policy, what should HUD require of PHAs to demonstrate that an initially noncompliant property was subsequently brought into compliance with the standards under an alternative inspection method?

7. Inspection of Mixed-Finance Properties (§ 982.405). Should HUD broaden the applicability of this provision beyond PBV-assisted properties with LIHTC or HOME financing or an FHA-insured mortgage? If so, to what specific type(s) of mixed-finance properties should it apply, and why?

8. General. Are there other opportunities to align requirements across programs? Please be specific.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 2577–0220 and 0169. In accordance with the Paperwork Reduction Act of 1995, 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 currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding is available for

public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the Finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule reduces administrative burdens on PHAs and MFH owners in many aspects of administering assisted housing. All PHAs and MFH owners, regardless of size, will benefit from the burden reduction proposed by this rule. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s belief that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.103, 14.123, 14.135, 14.149, 14.157, 14.181, 14.195, 14.235, 14.241, 14.326, 14.850, 14.871, and 14.872.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, 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.

24 CFR Part 574

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements

24 CFR Part 960

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

24 CFR Part 966

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

24 CFR Part 982

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

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

24 CFR Part 990

Accounting, Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5, 574, 960, 966, 982, 983, and 990 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

2. Amend § 5.216 as follows:

a. Designate the second paragraph (g)(1)(ii) as paragraph (g)(1)(iii);

b. Revise paragraph (h)(1);

c. In paragraph (h)(2), remove the phrase “paragraph (h)(1)” and add in its place “paragraph (g)(1)”; and

d. Add paragraph (h)(3).

The revision and addition read as follows:

§ 5.216 Disclosure and verification of Social Security and Employer Identification

Numbers.

* * * * *

(h) * * *

(1) Except as provided in paragraphs (h)(2) and (3) of this section, if the processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.

* * * * *

(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household’s date of admission, the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program. The processing entity shall grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant’s failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation

required in paragraph (g)(1) of this section within the required time period, the processing entity shall follow the provisions of § 5.218.

* * * * *

3. Amend § 5.520 as follows:

- a. Revise paragraph (c)(1) introductory text;
- b. Revise paragraph (c)(2) introductory text;
- c. Revise paragraph (d); and
- d. Add paragraph (e).

The revisions and addition read as follows:

§ 5.520 Proration of assistance.

* * * * *

(c) * * *

(1) Section 8 assistance other than assistance provided for a tenancy under the Section 8 Housing Choice Voucher Program. For Section 8 assistance other than assistance for a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

* * * * *

(2) Assistance for a Section 8 voucher tenancy. For a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

* * * * *

(d) Method of prorating assistance for Public Housing covered programs. (1) The PHA shall prorate the family's assistance as follows:

(i) Step 1. Determine the total tenant payment in accordance with § 5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) Step 2. Subtract the total tenant payment from the PHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible (“family maximum subsidy”).

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

(iv) Step 4. Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status (“eligible family members”).

(2) The product of steps 1 through 4 of paragraphs (d)(1)(i) through (iv) of this section is the amount of subsidy for which the family is eligible (“eligible subsidy”). The family’s rent is the PHA-established flat rent minus the amount of the eligible subsidy.

(e) Method of prorating assistance when the mixed family’s TTP is greater than the Public Housing flat rent. When the mixed family’s TTP is greater than the flat rent, the PHA must use the TTP as the mixed family TTP. The PHA subtracts from the mixed family TTP any established utility allowance, and the sum becomes the mixed family rent.

§ 5.601 [Amended]

4. In § 5.601 in paragraph (e),, remove the phrase “Housing Opportunities for Persons with AIDS (24 CFR part 574);”.

5. In § 5.603, revise the definitions of “Extremely low income family” and “Total tenant payment” in paragraph (b) to read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Extremely low-income family. A family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

(2) 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Total tenant payment. See § 5.628.

* * * * *

6. Amend § 5.609 as follows:

a. Revise paragraph (a);

b. In paragraph (b)(9), add the phrase “and any other required fees and charges” after “tuition” in the first sentence; and

c. Add paragraphs (e) and (f).

The revision and additions read as follows:

§ 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, either:

(i) Prior to admission or the annual reexamination effective date (i.e., “actual past income”); or

(ii) During the 12-month period following admission or the annual reexamination effective date (i.e., “projected income”); and

(2) Are not specifically excluded in paragraph (c) of this section.

* * * * *

(e) At the family’s request, the PHA or owner must use projected income to calculate annual income.

(f) Absent a family’s request to use projected income to calculate annual income:

(1) A PHA may choose to determine annual income by using actual past income in lieu of projected income for its public housing or Housing Choice Voucher program (or both), but it must apply the same definition of annual income for all families in the selected program.

(2) An owner may choose to determine annual income by using actual past income in lieu of projected income, but it must apply the same definition of annual income for all families in a single property.

7. In § 5.617, revise paragraphs (a) and (c) to read as follows:

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

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Continuum of Care Program (24 CFR part 578); and the Housing Choice Voucher Program (24 CFR part 982). For the Housing Opportunities for Persons With AIDS (HOPWA) program, refer to 24 CFR 574.305. For public housing program self-sufficiency incentives, refer to 24 CFR 960.255.

* * * * *

(c) Disallowance of increase in annual income—(1) Initial 12-month exclusion. During the consecutive 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family 100 percent of any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second 12-month exclusion. During the second consecutive 12-month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family not less than 50 percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Duration of exclusions. Any income exclusions under this paragraph (c) shall continue only as long as the family member who is a person with disabilities of a qualified family is continually employed, during the 24-month exclusionary period. If the family member becomes unemployed, the income exclusion shall stop and the family must re-qualify under the terms of paragraphs (a) and (b) of this section for the benefits under this section.

(4) Conflicting exclusions. If grant funds affected by this paragraph (c) are combined with grant funds that have conflicting earned income exclusions, the regulations pertaining to the program that provides the rental assistance shall govern.

* * * * *

8. In § 5.657, add paragraph (d) to read as follows:

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

* * * * *

(d) Reexaminations for families with fixed incomes. For families with fixed incomes, an owner may elect to determine the family's annual income at reexamination by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(1) "Families with fixed income" is defined as families whose income consists solely of the following:

- (i) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or
- (ii) Federal, State, local and private pension plans.

(2) To verify a cost of living adjustment, an owner may use adjustments published publicly or that are made available to the owner by tenant-provided, third party-generated documents. If no verification is available, the owner must follow the standard income verification process to calculate the change in income.

(3) An owner that adopts the streamlined reexamination procedures in this paragraph must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (§ 5.609(a)(1)(i)).

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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

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

10. Add § 574.305 to read as follows:

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

(a) Applicability. The disallowance of increase in annual income provided by this section is applicable only to the HOPWA program.

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

Disallowance. Exclusion from annual income.

Person with disabilities. See 24 CFR 5.403.

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

Qualified family. A family residing in HOPWA-assisted housing:

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

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

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

(c) Disallowance of increase in annual income. (1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the grantee or project sponsor must exclude from annual income (as defined at 24 CFR 5.609) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

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

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (2) of this section is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) of this section and a maximum of twelve months for disallowance under paragraph (c)(2) of this section, during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

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

§ 574.310 [Amended]

11. In § 574.310, remove the citation “24 CFR 5.617” and add in its place “§ 574.305” in paragraph (d)(1).

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

12. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z-3, and 3535(d).

13. In § 960.102, revise paragraph (a) to read as follows:

§ 960.102 Definitions.

(a) Definitions found elsewhere:

(1) General definitions. The following terms are defined in 24 CFR part 5, subpart A : 1937 Act, drug, drug-related criminal activity, elderly person, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.

(2) Definitions under the 1937 Act. The following terms are defined in 24 CFR part 5, subpart D: annual contributions contract (ACC), applicant, elderly family, family, person with disabilities.

(3) Definitions and explanations concerning income and rent. The following terms are defined or explained in 24 CFR part 5, subpart F: Annual income (see 24 CFR 5.609); economic self-sufficiency program, extremely low income family, low income family, tenant rent, total tenant payment (see 24 CFR 5.613), utility allowance.

* * * * *

14. Amend § 960.253 as follows:

a. Revise paragraph (b);

b. In paragraph (c)(1), remove the phrase “PHA’s rent policies” and add in its place “PHA’s policies”;

- c. Remove the last sentence of paragraph (c)(3) and add paragraph (c)(4);
- d. Revise paragraphs (d) and (e);
- e. Redesignate paragraph (f) as paragraph (g); and
- f. Add a new paragraph (f).

The revisions and addition read as follows:

§ 960.253 Choice of rent.

* * * * *

(b) Flat rent. (1) The flat rent is based on the rental value of the unit, and is subject to the following requirements:

(i) Not less than once every five PHA fiscal years, the PHA must use a reasonable method to determine the rental value for a unit.

(ii) The PHA must establish a flat rent that is based upon the requirements of paragraph (b)(1)(i), but the flat rent may not be less than 80 percent of the applicable Fair Market Rent (FMR) as determined under 24 CFR part 888, subpart A.

(iii) For units where utilities are tenant-paid, the PHA must adjust the flat rent amount downward by the amount of a utility allowance for which the family might otherwise be eligible under 24 CFR part 965, subpart E.

(iv) The PHA must revise, if necessary the flat rent amount for a unit no later than 90 days after HUD issues new FMRs.

(2) If a new flat rent, adjusted to meet the 80 percent of FMR threshold, would cause a family's rent to increase by more than 35 percent, the family's rent increase must be phased in at 35 percent annually until such time that the family chooses to pay the income-based rent or the family is paying the flat rent established pursuant to this paragraph.

(3) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) * * *

(4) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments quarterly, for reimbursements totaling \$20 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA must reimburse the family for a prorated share of the applicable reimbursement.

(ii) If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) Ceiling rent. A PHA using ceiling rents authorized and established before October 1, 1999, may continue to use ceiling rents, provided such ceiling rents are set at the level required for flat rents under this section. PHAs must follow the requirements for calculating and adjusting flat rents in paragraph (b) of this section when calculating and adjusting ceiling rents.

(e) Information for families. For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship;
and

(2) The dollar amounts of tenant rent for the family under each option, following the procedures in paragraph (f) of this section.

(f) Reexamination of family income and revisions of flat rental amounts. The PHA must revise the flat rental amount, as necessary, based on the findings of the PHA's rental value analysis and changes to the FMR. Families must be offered the choice between a flat rental amount and a previously calculated income-based rent according to the following:

(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years.

(2) At initial occupancy, or in any year in which a participating family is paying the income-based rent, the PHA must:

(i) Conduct a full examination of family income and composition, following the provisions in § 960.257;

(ii) Inform the family of the flat rental amount and the income-based rental amount determined by the examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

(3) In any year in which a family chooses the flat rent option but the PHA chooses not to conduct a full examination of family income and composition for the annual rent option under the authority of paragraph (f)(1) of this section, the PHA must:

(i) Use income information from the examination of family income and composition from the first annual rent option;

(ii) Inform the family of the updated flat rental amount and the rental amount determined by the most recent examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

* * * * *

15. In § 960.255, revise paragraph (c) to read as follows:

§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.

* * * * *

(c) Disallowance of increase in annual income—(1) Initial 12-month exclusion. During the consecutive 12-month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 24 CFR 5.609) of a qualified family 100 percent of any increase in income of the family member as a result of employment over prior income of that family member.

(2) Second 12-month exclusion. During the second consecutive 12-month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family not less than 50 percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Duration of exclusions. Any income exclusions under this paragraph (c) shall continue only as long as a member of a qualified family is continually employed. If the family member becomes unemployed, the income exclusion shall stop and the family must re-qualify

for the benefits under this section, at which point such family shall be eligible for all benefits under this paragraph (c).

* * * * *

16. In § 960.257 revise the section heading and paragraphs (a) and (b) to read as follows:

§ 960.257 Family income and composition: Annual and interim reexaminations.

(a) When PHA is required to conduct reexamination. (1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments to the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family income and composition at least once every three years, in accordance with the procedures in § 960.253(f).

(3) For all families who include nonexempt individuals, as defined in § 960.601, the PHA must determine compliance once each 12 months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) Interim reexaminations. (1) A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination within a reasonable time after the family request.

(2) The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition. The PHA must make the interim reexamination of family income or composition within a reasonable time after the family request.

(3) For families with fixed incomes, a PHA may elect to recalculate a family's annual income at an interim reexamination by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(i) "Families with fixed income" is defined as families whose income consists solely of the following:

(A) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(B) Federal, State, local and private pension plans.

(ii) To verify a cost of living adjustment, a PHA may use adjustments published publicly or that are made available to the PHA by tenant-provided, third party-generated documents. If no verification is available, the PHA must follow the standard income verification process to calculate the change in income.

(iii) A PHA that adopts the streamlined reexamination procedures in this paragraph (b)(3) of this section must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (24 CFR 5.609(a)(1)(i)).

* * * * *

17. In § 960.259, revise paragraph (c)(1) introductory text, and add paragraph (c)(2) to read as follows:

§ 960.259 Family information and verification.

* * * * *

(c) * * *

(1) The PHA must obtain and document in the family file third-party verification of the following factors, or must document in the file why third-party verification was not available:

* * * * *

(2) For a family with net assets equal to or less than \$5,000, a PHA may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

18. In § 960.605, revise paragraphs (c)(3) through (5) to read as follows:

§ 960.605 How PHA administers service requirements.

* * * * *

(c) * * *

(3) The PHA must review family compliance with service requirements and must verify such compliance annually at least 30 days before the end of the 12-month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA may obtain verification of family compliance from such third parties or may accept a signed certification from the family member that he or she has performed such qualifying activities.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in a participant family's files.

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at 24 CFR 5.105(a) and affirmatively further fair housing in all their activities in accordance with the AFFH Certification as described in 24 CFR 91.225(a)(1).

19. In § 960.607, revise paragraph (a) to read as follows:

§ 960.607 Assuring resident compliance.

(a) Acceptable documentation demonstrating compliance. (1) If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide one of the following:

(i) A signed certification to the PHA by such other organization that the family member has performed such qualifying activities; or

(ii) A signed self-certification to the PHA by the family member that he or she has performed such qualifying activities.

(2) The signed self-certification must include the following:

(i) A statement that the tenant contributed at least 8 hours per month of community service not including political activities within the community in which the adult resides; or participated in an economic self-sufficiency program (as that term is defined in paragraph (g) of this section) for at least 8 hours per month;

(ii) The name, address, and a contact person at the community service provider; or the name, address and contact person for the economic self-sufficiency program;

(iii) The date(s) during which the tenant completed the community service activity, or participated in the economic self-sufficiency program;

(iv) A description of the activity completed; and

(v) A certification that the tenant's statement is true.

* * * * *

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

20. The authority citation for part 966 continues to read as follows:

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

21. Amend § 966.52 by adding a second sentence at the end of paragraph (a); and adding paragraph (e), to read as follows:

§ 966.52 Requirements.

(a) * * * A PHA may establish an expedited grievance procedure as defined in § 966.53.

* * * * *

(e) The PHA must not only meet the minimal procedural due process requirements contained in this subpart but also satisfy any additional requirements required by local, state, or federal law.

22. In § 966.53, revise paragraphs (b), (d), and (e) to read as follows:

§ 966.53 Definitions.

* * * * *

(b) Complainant means any tenant whose grievance is presented to the PHA or at the project management office.

* * * * *

(d) Expedited grievance means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves: (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) Hearing officer means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person.

Such individual or individuals do not need legal training.

* * * * *

§ 966.54 [Amended]

23. Amend § 966.54 by removing the second and third sentences.

§ 966.55 [Removed]

24. Remove § 966.55.

25. Amend § 966.56 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b)(2), remove the comma;
- c. Remove paragraphs (c), (f), and (g);
- d. Redesignate paragraphs (d), (e), and (h) as paragraphs (c), (d), and (e), respectively;
- e. Revise redesignated paragraph (c); and
- f. In redesignated paragraph (e), add paragraph (e)(3).

The revisions and addition read as follows:

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and the appropriate official.

* * * * *

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

* * * * *

(e) * * *

(3) Materials must be provided in other languages prevalent in the Community in accordance with HUD' Final Guidance on LEP published in the Federal Register on January 22, 2007.

26. Revise § 966.57 to read as follows:

§ 966.57 Decision of the hearing officer.

(a) The hearing officer shall prepare a written decision, including the reasons for the PHA's decision within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder.

(b) The decision of the hearing officer shall be binding on the PHA unless the PHA Board of Commissioners determines that

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affects the complainant's rights, duties, welfare or status;

(2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

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

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

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

28. In § 982.309 add paragraph (a)(5) to read as follows:

§ 982.309 Term of assisted tenancy.

(a) * * *

(5) The PHA may adopt policies limiting the effective date of the lease to a certain day or days of the month, such as the first day of the month. Assistance paid upon family move-out must be in accordance with § 982.311(d).

* * * * *

29. In § 982.402 add a sentence at the end of (d)(2) to read as follows:

§ 982.402 Subsidy Standards.

* * * * *

(d) * * *

(2) * * * However, utility allowances must follow § 982.517(d).

30. Amend § 982.405 as follows :

a. In paragraph (a), remove the word “annually” and add in its place “biennially”;

b. Revise paragraph (e); and

c. Add paragraph (f).

The revision and addition read as follows:

§ 982.405 PHA initial and periodic unit inspection.

* * * * *

(e) The PHA may not charge the family for inspection or reinspection of the unit. The PHA may not charge the owner for the initial inspection of the unit or a regularly scheduled inspection of the unit. The PHA may establish a reasonable fee to owners for reinspections if the

reinspection reveals that deficiencies cited in the previous inspection that the owner is responsible for repairing pursuant to § 982.404(a) were not corrected. The owner may not pass this fee along to the family.

(f) If a participant family or government official reports a condition that is life-threatening (i.e., the PHA would require the owner to make the repair within no more than 24 hours in accordance with § 982.404(a)(3)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (i.e., the PHA would require the owner to make the repair within no more than 30 calendar days), then the PHA must inspect the unit within 15 days of when the PHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

§ 982.406 [Redesignated as § 982.407]

31. Redesignate § 982.406 as § 982.407.

32. Add a new § 982.406 to read as follows:

§ 982.406 Use of Alternative Inspections.

(a) In general. (1) A PHA may comply with the biennial inspection requirement in § 982.405(a) by relying on an inspection conducted for another housing assistance program.

(2) Units in properties that are mixed-finance properties assisted with project-based vouchers may be inspected at least triennially pursuant to 24 CFR 983.103(g).

(b) Administrative plans. A PHA relying on an alternative inspection to fulfill the biennial inspection requirement for a particular unit must identify the alternative inspection

method being used in the PHA's administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its plan amendment and public notice requirements before using the alternative inspection method.

(c) Eligible inspection methods. (1) PHAs may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed under the Department of the Treasury's Low-Income Housing Tax Credit (LIHTC) program, or inspections performed by HUD with no action other than amending their administrative plans.

(2) If a PHA wishes to rely on an inspection method other than a method listed in paragraph (c)(1) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a certification affirming, under penalty of perjury, that the method "provides the same or greater protection to occupants of dwelling units" as would HQS. A PHA must also assure that it will be able to obtain the results of such alternative inspection; a PHA that is unable to obtain the results of an alternative inspection may not rely upon the inspection method to comply with the biennial inspection requirement in § 982.405(a).

(3) A PHA that submits a certification under paragraph (c)(2) of this section must monitor changes to the standards and requirements applicable to such method so that it is made aware of any weakening of the method that would cause the alternative inspection to no longer meet or exceed HQS, in which case the PHA may no longer rely upon the alternative inspection method to comply with the biennial inspection requirement.

(d) Rules for passing alternative methods. (1) In order to utilize an alternative inspection method, a property must meet the standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To

make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a “pass” score, then the PHA may rely on that inspection to demonstrate compliance with the biennial inspection requirement.

(ii) If a property is inspected under an alternative inspection method, and the property receives a “fail” score, then the PHA may not rely on that inspection to demonstrate compliance with the biennial inspection requirement.

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination — for example, in the case of a program where deficiencies are simply noted — then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a “fail” score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the biennial inspection requirements; if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

(2) Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection method, the PHA must, in a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any noted deficiencies.

(f) Records retention. As with all other inspection reports, and as required by § 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

33. Amend § 982.503 as follows:

a. Add paragraph (b)(1)(iii);

b. Remove the first word in paragraph (b)(2) and in its place add “Except as described in § 982.503(b)(1)(iii), the”;

c. In paragraph (c)(2), remove the paragraph heading, remove paragraph (c)(2)(ii), and redesignate paragraphs (c)(2)(i)(A) and (B) as paragraphs (c)(2)(i) and (ii), respectively.

The addition reads as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(1) * * *

(iii) The PHA may establish an exception payment standard up to 120 percent if required as a reasonable accommodation for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at § 982.507.

* * * * *

§ 982.505 [Amended]

34. In § 982.505:

a. In the section heading, remove “Voucher tenancy:”; and

b. In paragraph (d), remove the phrase “within the basic range” and add in its place “between 90 and 120 percent of the FMR”.

35. In § 982.514, add paragraph (c) to read as follows:

§ 982.514 Distribution of housing assistance payment.

* * * * *

(c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments quarterly, for reimbursements totaling \$20 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement.

(ii) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

36. Amend § 982.516 as follows:

a. Add a hyphen between “third” and “party” in paragraph (a)(2) introductory text and add paragraph (a)(3);

b. Remove paragraph (e);

c. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively;

d. Add a new paragraph (b);

e. In redesignated paragraph (c), revise the paragraph heading; and

f. Revise redesignated paragraph (e)(2).

The revisions and addition read as follows:

§ 982.516 Family income and composition: Annual and interim examinations.

(a) * * *

(3) For a family with net assets equal to or less than \$5,000, a PHA may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration. The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income

(b) Families with fixed income. For families with fixed incomes, a PHA may elect to recalculate a family's annual income by applying a verified cost of living adjustment for the source of income to the previously verified or adjusted income amount.

(1) "Families with fixed income" is defined as families whose income consists solely of the following:

(i) Social Security payments, including Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); or

(ii) Federal, State, local and private pension plans.

(2) To verify a cost of living adjustment, a PHA may use adjustments published publicly or that are made available to the PHA by tenant-provided, third party-generated documents. If no verification is available, the PHA must follow the standard income verification process to calculate the change in income.

(3) A PHA that adopts the streamlined reexamination procedures in this paragraph (b) of this section must use projected income to determine a family's annual income and may not adopt the option to determine annual income using actual past income (24 CFR 5.609(a)(1)(i)).

(c) Interim reexaminations. * * *

* * * * *

(e) * * *

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment in accordance with § 982.505.

* * * * *

37. Amend § 982.517 as follows:

- a. Capitalize the first word in paragraph (b)(2)(i);
- b. Revise paragraph (b)(3);
- c. In paragraph (c)(1), capitalize the first word and remove the word “PHAs” and add in its place the word “has”;
- d. Redesignate paragraph (c)(2) as paragraph (c)(3) and add a new paragraph (c)(2); and
- e. Revise paragraph (d).

The revisions read as follows:

§ 982.517 Utility allowance schedule.

* * * * *

(b) * * *

(3) The cost of each utility and housing service category must be stated separately. For each of these categories, the utility allowance schedule must take into consideration unit size (by number of bedrooms) and unit type (e.g., apartment, row-house, town house, single-family detached, and manufactured housing). At the PHA’s discretion, “unit type” may consider solely whether the unit is “attached” or “detached.”

* * * * *

(c) * * *

(2) In the event that the utility allowance to be used in calculating the housing assistance payment provided on behalf of a participant decreases based solely on a PHA opting to determine unit type based solely on whether a unit is “attached” or “detached,” the PHA must provide at least 60 days notice to the participant prior to the revised utility allowance taking effect.

* * * * *

(d) Use of utility allowance schedule. (1) The PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

(2) At reexamination, the PHA must use the PHA current utility allowance schedule, provided the PHA is able to provide a family with at least 60 days’ notice prior to such reexamination. A PHA may comply with this 60-day notice requirement by means of an interim reexamination.

* * * * *

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

38. The Authority citation for part 983 continues to read as follows:

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

§ 983.2 [Amended]

39. In § 983.2 amend paragraph (c)(4) by removing the citation “§ 982.406” and adding in its place “§ 982.407”.

40. In § 983.103, revise paragraph (d) and add paragraph (g) to read as follows:

§ 983.103 Inspecting Units.

* * * * *

(d) Biennial inspections. (1) At least biennially during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted toward meeting this inspection requirement.

(2) If more than 20 percent of the biennial sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

(3) A PHA may also use the procedures applicable to HCV units in 24 CFR 982.406.

* * * * *

(g) Mixed-Finance Properties. In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to inspection under the LIHTC or HOME program or as a result of an FHA-insured mortgage, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

41. The Authority citation for part 990 continues to read as follows:

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

42. In § 990.150 revise paragraph (a) to read as follows:

§ 990.150 Limited vacancies.

(a) Operating subsidy for a limited number of vacancies. HUD shall pay operating subsidy for a limited number of vacant units under an ACC. The limited number of vacant units shall be equal to or less than 3 percent of the unit months on a project-by-project basis based on the definition of a project under subpart H of this part (provided that the number of eligible unit months shall not exceed 100 percent of the unit months for a project), beginning July 1, 2014.

* * * * *

Dated: December 22, 2014.

Jemine A. Bryon, Acting Assistant Secretary for
Public and Indian Housing

Biniam T. Gebre, Acting Assistant Secretary for
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Clifford Taffet, General Deputy Assistant
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[FR-5743-P-01]

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