



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 93, 574, 960, 966, 982

[Docket No FR-6057-P-01]

RIN 2577-AD03

**Housing Opportunity Through Modernization Act of 2016:
Implementation of Sections 102, 103, and 104**

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

ACTION: Proposed Rule.

SUMMARY: The Housing Opportunity Through Modernization Act of 2016 (HOTMA) was enacted on July 29, 2016. This proposed rule would revise HUD regulations to put sections 102, 103, and 104 of HOTMA into effect. These sections make sweeping changes to the United States Housing Act of 1937, particularly those affecting income calculation and reviews. Section 102 changes requirements pertaining to income reviews for public housing and HUD's Section 8 programs. Section 103 modifies the continued occupancy standards of public housing residents whose income has grown above the threshold for initial eligibility. Section 104 sets maximum limits on the assets that families residing in public housing and Section 8 assisted housing may have. Additionally, section 104 provides that HUD must direct public housing agencies to require that all applicants for and recipients of assistance through HUD's public housing or Section 8 programs provide authorization for public housing agencies to obtain financial records needed for eligibility determinations. In addition to amending regulations for HUD's public housing and Section 8 programs, this proposed rule would change regulations of other HUD programs that, for consistency, adopted regulations of programs that are based on statutory

provisions amended by sections 102 and 104. Therefore, this rule makes changes that affect HUD's HOME Investment Partnerships, Housing Trust Fund, and Housing Opportunities for Persons With AIDS programs, as well as HUD's public housing and Section 8 programs.

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

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov. To receive consideration as public comments, comments must be submitted through one of the two methods specified below. All submissions must refer to the above docket number and title.

1. 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 their timely receipt by HUD, and enables HUD to make them 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.

2. 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.

FOR FURTHER INFORMATION CONTACT:

Public Housing, Housing Choice Voucher (including project-based vouchers), and moderate rehabilitation programs, at HOTMAquestions@hud.gov.

Multifamily Housing programs: Kate Nzive, Director, Assisted Housing Oversight Division, Office of Multifamily Housing, at katherine.a.nzive@hud.gov.

HOME Investment Partnerships and Housing Trust Fund programs: Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, at 202-708-2684.

Housing Opportunities for Persons With AIDS program: Rita Flegel, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, at 202-402-5374.

Persons with hearing or speech impairments may access the above telephone numbers through TTY by calling the Federal Relay Service, toll-free, at 800-877-8339.

The mailing address for each office contact is Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

SUPPLEMENTARY INFORMATION

I. Background

On July 29, 2016, HOTMA was signed into law (Pub. L. 114–201, 130 Stat. 782). HOTMA makes numerous changes to statutes governing HUD programs, including sections 3, 8, and 16 of the United States Housing Act of 1937 (1937 Act). HUD issued a notice in the Federal Register on October 24, 2016, at 81 FR 73030, announcing which statutory changes made by HOTMA could be implemented immediately and which statutory changes require further action by HUD.

On November 29, 2016, HUD published another Federal Register notice (81 FR 85996), seeking public input on how HUD should determine the income limit for public housing

residents, pursuant to section 103 of HOTMA, and this was followed by a July 26, 2018, notice (83 FR 35490) that made some provisions of section 103 of HOTMA effective. On January 18, 2017, HUD published a Federal Register notice (82 FR 5458), that made multiple HOTMA provisions for the Housing Choice Voucher (HCV) program, unrelated to sections 102, 103, and 104, effective and solicited public comment on HUD's implementation methods. The conforming regulatory changes for the HCV program provisions implemented by the January 18, 2017, Federal Register notice are not part of this proposed rule and will be addressed through a separate rulemaking.

Many of the statutory provisions in HOTMA are intended to streamline administrative processes and reduce burdens on public housing agencies (PHAs) and private owners. Sections 102, 103, and 104 of HOTMA require that HUD make changes to its regulations and take other actions—some of which will also reduce burdens on PHAs and private owners once implemented.

A. HOTMA Section 102

Section 102 of HOTMA deals with income reviews in HUD's public housing and Section 8 programs. Section 102(a) amends section 3(a) of the 1937 Act to revise the frequency of family income reviews and the calculation of income and requires HUD, in consultation with other appropriate Federal agencies, to develop electronic procedures enabling PHAs to access income determinations for other Federal means-tested programs. Section 102(c) amends section 3(b) of the 1937 Act to change the definitions, for the public housing and Section 8 programs, of income and adjusted-income for each member of the household who is 18 years or older and unearned income for each dependent who is less than 18 years old. Section 102(d) amends section 8(o) of the 1937 Act, which authorizes the HCV Program, but existing HUD regulations already reflect

the changes. Section 102(e) changes the definition of “income” to “annual adjusted income” for the Enhanced Voucher Program. Section 102(f) strikes the last sentence of paragraph (3) of section 8(c) of the 1937 Act, eliminating the requirement that reviews of family income shall be made no less frequently than annually for project-based housing. Under section 102(h), statutory amendments based on changes in section 102 are not effective until the beginning of the calendar year after HUD has issued a notice or regulation implementing the changes.

Some provisions in section 102 of HOTMA do not require regulatory changes and are not addressed in this proposed rule. Section 102(b) requires HUD to submit a certification letter to Congress regarding hardship exemptions to minimum monthly rent and does not amend the 1937 Act or prompt changes to HUD regulations. Section 102(g)(1) states that HUD may make appropriate adjustments in the formula income of PHAs that experience a material and disproportionate reduction in rental income during the first year in which the provisions of this section are implemented. 24 CFR 90.110(c) currently provides that HUD will address secondary elements that will be used in the revised Operating Fund Formula through nonregulatory means, so this provision does not require a regulatory change. Section 102(g)(2) requires that HUD submit a report to Congress identifying and calculating the impact of changes made by sections 102 and 104 of HOTMA during each of the first 2 years after the implementation of section 102. Section 102(i) requires HUD to conduct a study on the impact any decreased amount of deductions in income that result from the implementation of this section has on elderly and disabled families.

B. HOTMA Section 103

Section 103 of HOTMA amends section 16(a) of the 1937 Act to place an income limitation on a public housing tenancy for families. The law requires that after a family’s income

has exceeded 120 percent of the area median income (AMI) (or a different limitation established by HUD) for 2 consecutive years, a PHA must terminate the family's tenancy within 6 months after the expiration of the 2-year period or charge the family a monthly rent equal to the greater of (1) the applicable Fair Market Rent or (2) the amount of monthly subsidy for the unit, including amounts from the operating and capital fund, as determined by regulations. For purposes of this proposed rule, the income limit established by HOTMA will be referred to as the "over-income limit." A PHA must notify a family of the potential changes to monthly rent 1 year after the PHA determines that the family's income exceeds the over-income limit. Pursuant to section 3(a)(5) of the 1937 Act, the over-income limit does not apply in instances where a PHA operating fewer than 250 public housing units has admitted families with income exceeding the over-income limit, if the PHA is renting to those families because there are no income-eligible families on the PHA's waiting list or applying for public housing assistance. Each PHA must submit a report annually to HUD that specifies, as of the end of the year, the number of families residing in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing projects. Such reports must be publicly available.

The new language in section 16(a)(5) of the 1937 Act sets the over-income limit at 120 percent of the AMI. However, HUD can adjust the over-income limit if the Secretary determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. On July 26, 2018, at 83 FR 35490, HUD published a final notice in the Federal Register implementing HUD's methodology for determining the over-income limit by using the very low-income (VLI)¹ level for the applicable area as the baseline

¹ HUD's income limits were developed by HUD's Office of Policy Development and Research and are updated

and multiplying it by 2.4. Because VLI is preliminarily calculated as 50 percent of the estimated area median income for the family, in most cases this would result in a figure matching 120 percent of the area median income. However, in areas where the VLI has been adjusted to account for high or low housing costs or to prevent it from being lower than 50 percent of the state, non-metro median family income, the final amount would result in an adjusted over-income limit as well.

C. HOTMA Section 104

Section 104 of HOTMA amends section 16 of the 1937 Act to set limits on the assets that families residing in public housing and families receiving assistance under section 8 of the 1937 Act may own. In addition to providing limitations on assets, this section defines the term “net family assets” and lists exclusions to the definition. The section allows for families to self-certify that they are not subject to the limitation on assets, under certain circumstances. Section 104 also grants PHAs and owners authority to not enforce the asset limitation, provided that the PHA or owner sets forth a policy to that effect in its PHA plan or in a plan adopted by the owner. Section 104 also directs HUD to direct PHAs to require all applicants and recipients under the 1937 Act to authorize the PHA to obtain financial information needed in connection with a determination with respect to eligibility.

II. This Proposed Rule

A. Affected Programs and Housing Providers

HUD proposes to revise 24 CFR parts 5, 92, 93, 574, 960, and 982 in order to implement sections 102, 103, and 104 of HOTMA. Although sections 102, 103, and 104 amend the 1937 Act, which governs HUD’s public housing and Section 8 programs, this proposed rule also aligns

annually. Information about HUD’s income limits and HUD’s methodology for adjusting income limits as part of the income limit calculation can be found at <https://www.huduser.gov/portal/datasets/il.html>.

policies and procedures across program offices, where appropriate, to include programs that are administered by HUD's Office of Community Planning and Development, including the HOME Investment Partnerships (HOME), Housing Trust Fund (HTF), and Housing Opportunities for Persons With AIDS (HOPWA) programs. Alignment will reduce disparities between the programs and better simplify program administration for HUD grantees that manage multiple programs.

B. HOTMA Section 102

Section 102 of HOTMA revises the definition in the 1937 Act of family income. Because a variety of programs use this definition, HUD offers the following chart showing which programs (other than public housing and the voucher programs) are affected by various changes to the income regulatory provisions in 24 CFR part 5:

	PBRA	HOPWA (Part 574)	HOME (Part 92)	Housing Trust Fund (Part 93)	202/811
Net Family Assets Definition (5.603)	Yes (§ 983.4)	Yes, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under HOPWA is excluded (§ 574.310(f)(1))	Yes, or may use IRS income definition (§ 92.203(b)(1))	Yes, or may use IRS income definition (§ 93.151(b)(1)(i))	Yes, or may use IRS income definition (§ 891.105)
Annual Income Definition (5.609(a))	Yes (§ 983.4)	Yes (§ 574.310(d)(1))	Yes (§ 92.203(b)(1))	Yes (§ 93.151(b)(1)(i))	Yes (§ 891.105)
Annual Income Exclusions (5.609(b))	Yes (§ 983.4)	Yes (§ 574.310(d)(1))	Yes (§ 92.203(b)(1))	Yes (§ 93.151(b)(1)(i))	Yes (§ 891.105)
Annual Income Calculation & Reexaminations (5.609(c))	Yes (§ 983.4)	Yes (§ 574.310(d)(1))	No	No	Yes (§ 891.105)
Adjusted	Yes (§ 983.4)	Yes (§	Yes (§	Yes (§	Yes (§ 891.105)

	PBRA	HOPWA (Part 574)	HOME (Part 92)	Housing Trust Fund (Part 93)	202/811
Income Mandatory Deductions (5.611(a))		574.310(d)(1))	92.203(e))	93.151(e)(1))	
Adjusted Income Additional Deductions (5.611(b))	Yes, ONLY when the PHA is an owner (§ 983.4)	Yes (§ 574.310(d)(1))	Yes, in PBRA units or when tenant receives Section 8 voucher assistance (§ 92.203(e)(3)).	Yes, in PBRA and public housing units or when tenant receives Section 8 voucher assistance (§ 93.151(e)(2))	No
Adjusted Income Financial Hardship Exemptions (5.611(c))	Yes (§ 983.4)	Yes (§ 574.310(d)(1))	Yes, if the grantee elects to do so in PBRA units or when tenant receives Section 8 voucher assistance (§ 92.203(e)(3)).	Yes, if the grantee elects to do so in PBRA and public housing units or when tenant receives Section 8 voucher assistance (§ 93.151(e)(2))	No
Asset restriction (5.618)	Yes (§ 5.618(e))	Yes, except for the provision of short-term mortgage or utility assistance or other homeownership assistance eligible under the HOPWA program, housing information services, or supportive services (§ 574.310(f))	No	No	No

Specific solicitation of comment 1: What administrative burdens or other considerations (particularly related to Rental Assistance Demonstration conversions) should HUD be aware of in relation to certain sections applying to public housing and the HCV and project-based voucher (PBV) programs, but not to project-based rental assistance (PBRA) and Section 202/811?

1. Income Reexaminations

Section 102(a)(1) of HOTMA revises the process by which PHAs and owners are required to review family income. To conform to these changes, this rule proposes to revise 24 CFR 5.657, 24 CFR 960.257, and 24 CFR 982.516 for the Section 8 PBRA programs, public housing, and the HCV program (including PBV). Currently, these program regulations provide that families may request an interim reexamination of family income because of any changes since the last examination, and the PHA or owner must make the interim determination within a reasonable period of time after the family's request. HOTMA provides that reviews of family income shall be made upon the request of the family at any time the income or deductions of the family change by an amount that is estimated to result in a decrease of 10 percent or more in annual adjusted income, or of such lower amount as HUD may establish or permit the PHA or owner to establish. This proposed rule would revise §§ 5.657, 960.257, and 982.516 to state that the owner or PHA may decline to process a family's request for an interim reexamination if the owner or PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income. The proposed rule further provides that the owner or PHA may still choose to process the family request for an interim reexamination if the owner or PHA estimates the family's adjusted income will decrease by less than 10 percent, provided the owner or PHA has established a standard for conducting the interim reexamination that is more generous to the family (e.g., the owner or PHA will conduct an interim reexamination if the decrease in family income exceeds 5 percent of adjusted income) and the PHA estimates the family's adjusted income will decrease by an amount that exceeds the owner or PHA threshold. HUD believes that while the 10 percent standard is appropriate as the HUD standard and consequently is not exercising its discretion to establish a lower threshold, owners and PHAs should have the flexibility to establish a lower threshold if they wish to do so and are

willing to take on the additional administrative burden. The owner or PHA may not establish an alternative threshold that is less generous to the family than the standard 10 percent decrease in adjusted income (e.g., the owner or PHA will only conduct an interim examination if the decrease in family adjusted income is estimated to be more than 20 percent decrease in adjusted income).

Additionally, HOTMA states that PHAs and owners must conduct a reexamination of family income at any time the family's adjusted income is estimated to have increased by 10 percent or more. This proposed rule would revise §§ 5.657, 960.257, and 982.516 to reflect this change and would specify that the owner or PHA would be required to conduct the reexamination within a reasonable period of time after the owner or PHA becomes aware of the family's change in income. HOTMA provides some administrative relief to this requirement by allowing PHAs or owners to elect not to conduct an income review in the last 3 months of a certification period, and that flexibility is incorporated into this proposed rule. PHAs or owners may not consider earned income of the family when estimating whether the family's adjusted income has increased, unless the increases in earned income correspond to previous decreases resulting from the family's request for an interim reexamination. This proposed rule would provide a definition for "earned income" in 24 CFR 5.100 that would apply when the term is used throughout this rule. The definition would mirror the definition of earned income that is currently in 24 CFR 984.103.

Specific solicitation of comment 2: HUD is specifically seeking comment about the "reasonable period of time" in which the PHA and owner must conduct an interim reexamination. HUD seeks comment on what should be considered reasonable and whether this rule should contain a specific time frame by which the PHA or owner must complete an interim

reexamination. HUD seeks comment on what such a time frame might be (for example, 2 weeks from the time of the family request, or the time the PHA or owner is aware of the change in income or family composition).

Specific solicitation of comment 3: HUD is seeking comments on whether HUD should continue to require PHAs and owners to use the Enterprise Income Verification (EIV) System for every income examination, or revise its regulations at 24 CFR 5.233 to require use of EIV only at initial and annual reexaminations and not at interim reexaminations. If HUD were to adopt such a proposal, housing providers could still use EIV for interim reexaminations but would not be required to use EIV. HUD is seeking comments on whether such a proposal would save time for PHAs and owners without significantly impacting the accuracy of the reexaminations.

2. Calculation of Family Income

Section 102(a)(1) of HOTMA also describes how PHAs and owners must calculate family income, and this proposed rule would revise 24 CFR 5.609 to account for this. Specifically, this proposed rule would revise § 5.609 to direct PHAs and owners to estimate the income of the family for the upcoming year to determine family income for initial occupancy or for the initial provision of housing assistance or for an interim reexamination of family income. In determining family income for annual reviews, this proposed rule would provide that the PHA or owner must use the income of the family as determined by the PHA or owner for the preceding year, taking into account any redetermination of income undertaken during the preceding year. For example, if a PHA had made a redetermination of the family's income during the preceding year because the family's income had decreased by more than 10 percent, the PHA would be required at the annual review to use that redetermination to determine the family's income for the forthcoming year. This will not apply in situations where the PHA or

owner uses a streamlined income determination. HOTMA provides that the PHA or owner may make adjustments, as it considers appropriate, to reflect current income if during the previous 12-month period there was a change in income that was not accounted for in a redetermination of income. However, in order to properly account for income, this rule proposes that the PHA or owner must make adjustments to reflect current income if during the previous 12-month period there was a change in income that was not accounted for in a redetermination of income. For example, if a family reported a decrease in income during the preceding year but the PHA had not conducted an interim redetermination because the decrease was less than 10 percent of the family's annual adjusted income, at the annual review the PHA would be required to adjust the determination of family income to reflect the decrease.

HOTMA provides for a "safe harbor" for PHAs or owners who determine family income prior to the application of deductions based on timely income determinations made for purposes of other means-tested Federal public assistance programs, including the Temporary Assistance for Needy Families block grant, Medicaid assistance, and the Supplemental Nutrition Assistance program. This proposed rule adopts this language in the new paragraph on calculation of income in 24 CFR 5.609. Specifically, HUD is permitting PHAs and owners to utilize the income determinations, regardless of definitional differences between other forms of public assistance and the respective HUD program. HUD believes this maximizes the streamlining benefit of the provision. Further, HUD proposes to add the Earned Income Tax Credit to the list of means-tested Federal public assistance.

Specific solicitation of comment 4: HUD is soliciting feedback on how allowing PHAs and owners to use income determinations from other forms of public assistance may impact program administration, and whether HUD should establish requirements as to which income

determination should be used if there is more than one determination of income from other public assistance programs available to the PHA or owner.

Specific solicitation of comment 5: HUD is soliciting feedback on whether there are other forms of Federal public assistance that should be added to the “safe harbor” list or whether HUD should limit the number of such programs.

3. Annualization of Income

In order to conform to HOTMA, this proposed rule would also remove an existing provision in 24 CFR 5.609 on annualization of income, which states that if it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

4. De minimis errors

HOTMA provides that a PHA or owner will not be out of compliance with the statute’s new provisions regarding income review and income calculation solely due to any de minimis errors made by the agency or owner in calculating family income. HOTMA does not define *de minimis* error. HUD proposes to revise 24 CFR 5.609, 24 CFR 5.657, 24 CFR 960.257, and 24 CFR 982.516 to provide that PHAs and owners will not be considered to have failed to comply with the requirements involving the calculation of income solely due to de minimis errors. Under this proposed rule, a de minimis error would be defined as any error where the PHA’s or owner’s calculation of a family’s income or adjusted income varies from the correct income or adjusted income by no more than 5 percent. In such instance, the PHA’s or owner’s income determination would not be considered incorrect for purposes of HUD’s monitoring and compliance oversight

responsibilities. However, the PHA or owner would still be required to take necessary corrective action to repay a family if the de minimis error in the income determination resulted in the family being overcharged for their rent.

Specific solicitation of comment 6: HUD specifically seeks comment from PHAs and owners on the methodology HUD should use in determining what constitutes a de minimis error. For example, as alternatives to the 5 percent figure discussed above, HUD could calculate de minimis errors to be those that do not exceed \$30 per month for any family, because a family's share of rent for 1937 Act programs is approximately \$30 for every \$100 of income. Or, HUD could calculate de minimis errors as those that represent less than 5 percent of all income determinations made during a calendar year.

5. Earned Income Disallowance

Section 102(a)(2) of HOTMA eliminates section 3(d) of the 1937 Act, which had thus far allowed for the disallowance of earned income (EID) from rent determinations. This section had provided that the rent of certain public housing residents or recipients of Section 8 assistance could not be increased as a result of increased income due to employment during the 12-month period beginning on the date on which the employment started, and that following the expiration of that 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in the income of such family member, as a result of employment, over the family's baseline income for the subsequent 12-month period. Other HUD programs, including the HOME, HOPWA, and Supportive Housing programs, similarly adopted an EID for persons with disabilities. Because the EID is no longer authorized under the 1937 Act, this proposed rule would eventually eliminate regulatory references to it.

Despite the elimination of the EID from HUD's regulations, HUD proposes to allow families who receive the EID benefit as of the effective date of a final rule implementing section 102 of HOTMA to continue receiving the benefits of EID until the allowed time frame expires, per the framework currently provided under § 5.617 or § 960.255. Given the time frames in § 5.617 or § 960.255, within 2 years from the effective date of a final rule implementing the elimination of EID, no family would receive the EID benefit.

Specific solicitation of comment 7: HUD specifically solicits comment on this proposal to allow current recipients of the EID benefit to continue to receive the benefit until the allowed time frame expires.

6. Definition of "Annual Income"

Section 102(c) of HOTMA provides a new definition for the term "income." As a result, this proposed rule would significantly revise HUD regulations in 24 CFR 5.609. Specifically, this rule proposes to simplify the existing definition of annual income by removing the list of examples of income sources and providing a broader definition of income that mirrors the definition of income provided by HOTMA. HUD hopes that this streamlining effort will reduce the burden on PHAs and owners in determining a family's income and reduce confusion about what should be included as income.

This HOTMA definition sufficiently encompasses what HUD considers to be income under the current regulation, with the exception of the treatment of imputed returns on assets. Therefore, in addition to the HOTMA definition of income, this proposed rule would specify that annual income also includes the imputed return on assets over \$50,000, based on the current passbook savings rate if the actual income from assets cannot be computed. The \$50,000 figure will be adjusted for inflation, in accordance with HOTMA. By simplifying the definition of

income and streamlining the regulatory provisions in § 5.609, HUD seeks to reduce the complexity of the existing income regulations.

HUD wants to be clear that income sources that were previously included in annual income are generally unchanged. HUD is only simplifying the definition to eliminate confusing regulatory language that excluded some income that should have been included and which increased litigation risk for housing providers who rely on HUD's definition of income.

Specific solicitation of comment 8: HUD is seeking feedback from interested parties on the impact of the proposed redefinition of annual income and whether it simplifies the understanding of what is included in annual income.

Specific solicitation of comment 9: HUD solicits comment on what inflationary index to use for purposes of adjusting the amount of imputed return on assets included in annual income, and other provisions in HOTMA that require amounts to be adjusted annually for inflation.

7. Income Exclusions

Additionally, HUD proposes updating the list of income exclusions to be consistent with HOTMA and to eliminate certain nonstatutory, discretionary exclusions from income in order to further streamline the income determination process. This proposed rule specifies that annual income does not include amounts that are explicitly excluded from the definition of income in HOTMA, but removes current exclusions for inheritances, capital gains, gifts, and other sporadic income. HUD has found that these provisions have caused confusion, there has been inconsistent application of these exclusions, and that these amounts should be included as annual income. HUD notes that with this change, realized capital gains—meaning those capital gains obtained from the sale of property in a given year—would be included as income under 24 CFR 5.609(a)(1). The value of unrealized capital gains—meaning the value of any increase in an asset

from one year to the next—would be included under the definition of Net Family Assets, which is used to determine imputed income under 24 CFR 5.609(a)(2).

Under this proposed rule, insurance payments remain excluded from annual income. However, HUD would strike the parentheses and the text enclosed in the parentheses that is intended to clarify that insurance payments include payments under health and accident insurance and worker's compensation. This proposed change does not represent any change in policy and payments under health and accident insurance and worker's compensation would continue to be excluded from annual income. HUD is proposing the change because HUD believes the current language has created more confusion in terms of what is meant by insurance payments than it has solved and to clarify that all insurance payments should be excluded from annual income, not just a select, few types.

Specific solicitation of comment 10: The proposed rule provides that distributions from a nonrevocable trust fund specifically provided to cover the cost of medical expenses for a minor is excluded income, as are any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty, owed to a family member arising out of law, that resulted in a member of the family being disabled. Distributions from a non-revocable trust fund provided for other purposes would be considered income. HUD is seeking comment on whether this rule should treat subsequent withdrawals of an insurance payment or settlement for personal or property losses (whether related to a minor or not), or amounts recovered in the aforementioned civil action or settlement, as income. **Start here** For example, while the initial lump sum addition of an insurance payment or an amount recovered in the civil action or settlement would not count as annual income, HUD seeks comment on whether this rule should specify that any amount the family subsequently withdraws against the payment

(e.g., from a bank account or trust fund into which the insurance payment or recovered amount was deposited) would be considered income. If this rule were to consider such subsequent withdrawals as income, HUD seeks comment on whether certain types of withdrawals should be excluded from annual income (in addition to the existing exclusion of distributions from a non-revocable trust fund specifically provided to cover the medical expenses of a minor). If the rule were to consider such subsequent withdrawals as income but exclude certain withdrawals that are used for a particular purpose (e.g., the family received an auto insurance payment after an accident that totaled the family car that the family deposited in their checking account and then subsequently used to purchase a replacement vehicle), HUD seeks comment on whether there are specific requirements that could be added to address the operational challenges that a PHA or owner would face in identifying, determining, and verifying that the withdrawal should be either included or excluded from annual income. Finally, HUD is requesting comment on whether the final rule should simply count the lump-sum insurance payment or settlement as income, rather than excluding it from annual income at any point in time.

HOTMA provides HUD the discretion to establish exclusions to income beyond those explicitly listed in HOTMA and any amount required by Federal law to be excluded from consideration as income. As a result, with the exception of inheritances, capital gains, gifts, and other sporadic income, HUD proposes to maintain the other exclusions currently listed in §5.609, but would revise the explanatory language for some of those exclusions to provide greater clarity and understanding. One of these exclusions is for earnings in excess of \$480 for full-time students 18 years or older who are not the head of household or spouse of the head of household. This proposed rule would effectively maintain that exclusion, but provide that the \$480 figure be adjusted annually for inflation. As explained below, this is because there is a mandatory \$480

deduction for dependents in the current regulations that HOTMA requires be adjusted for inflation, so the end result is that all earned income of dependent students should either be excluded or deducted from income. Additionally, this proposed rule would provide that the amount of the existing exclusion for adoption assistance payments, which is payments in excess of \$480 per adopted child, would also be adjusted annually for inflation.

This proposed rule would add additional exclusions to income in order to conform with HUD policy. This proposed rule would provide that amounts in or from ABLE accounts created under section 529A of the Internal Revenue Code (IRC) are excluded from income. ABLE accounts are tax-advantaged savings accounts for individuals with disabilities. This proposed rule would exclude the income of foster adults from consideration of family income in order to prevent disincentives to housing such persons, and would codify HUD's existing policy that state kinship or guardianship care payments are excluded from the definition of income. Additionally, this proposed rule would specify that loan proceeds (for example, car loans or payday loans) must be excluded from income. Loan proceeds are not considered income by HUD because they are typically a pass-through payment for the purpose of purchasing something like a car. In the case of a payday loan, a family uses a paycheck as collateral, thus counting such a loan as income would effectively count that income amount twice.

This proposed rule would also add an exclusion for payments received by Indian persons as a result of claims relating to the mismanagement of assets held in trust by the United States (including payments from tribal trust settlements), to the extent such payments are also excluded from gross income under the Internal Revenue Code. HUD already consider such payments to be excluded from annual income, but relies on the current exclusion for temporary, nonrecurring, or sporadic income to do so, which this proposed rule would remove.

Finally, the rule would codify long-standing practice of excluding from annual income replacement housing “gap” payments that offset increased rent and utility costs to families that are displaced from one federally subsidized housing unit and move into another federally subsidized housing unit. HUD currently excludes these payments from income as “temporary, nonrecurring, or sporadic income” under § 5.609(c)(9). This rule preserves the gap payment exclusion and clarifies that this exclusion only exists to the extent that the tenant’s out of pocket expenses for rent and utilities in their new federally subsidized housing are higher than they were in their previous federally subsidized housing. Later changes to a tenant’s contribution due solely to changes in family income, size, or composition should not be considered when determining if a gap has been reduced or eliminated. If the gap is reduced or eliminated because of reasons such as a subsequent move by the tenant or change in the subsidy program applicable to the tenant’s unit, and the tenant chooses to retain or continue to receive their replacement housing “gap” payment, then the portion of the “gap” payment that is no longer needed to close the gap should be counted as income for purposes of determining annual income under § 5.609.

HOTMA provides an income exclusion for full-time dependent students for any grant-in-aid or scholarship amounts used for the costs of tuition or books, and, in such amounts as HUD may allow, for the cost of room and board. In implementing this provision and as part of this proposed rule’s objective to simplify income determinations, HUD proposes to combine the student financial assistance requirements under a new 24 CFR 5.609(b)(9) (currently, student financial assistance exclusion requirements are found at §5.609(b)(9) and at §5.609(c)(6)). The proposed rule provides in general that the full amount of student financial assistance paid directly to the student or to the education institution on the student’s behalf is excluded from annual income. The rule defines financial assistance to be any grant-in-aid, scholarship, or other

assistance amounts an individual receives for the costs of tuition, books, room and board, and other fees charged to the student by the education institution.

Since 2005, HUD's Appropriations Acts have placed limits on the amount of financial assistance that is excluded from income for students applying for and receiving Section 8 assistance who are not over the age of 23 with dependent children. In accordance with that statutory restriction, this proposed rule would provide that, for those students, the financial assistance in excess of the cost of tuition and any other required fees and charges under the Higher Education Act of 1965, from private sources, or an institution of higher education, shall be considered income. This categorization of funds as income does not apply to public housing students, students under other HUD programs, or to Section 8 students over the age of 23 with dependent children, for whom the financial assistance in excess of the cost of tuition the individual receives for the cost of books, room and board, and other fees charged by the education institution is excluded from annual income (in addition to the financial assistance that covers the student's tuition).

HOTMA also provides an income exclusion for any amount in or from, or any benefits from, any Coverdell educational savings account or any qualified tuition program under section 530 and section 529 of the Internal Revenue Code of 1986, respectively. The proposed rule covers these HOTMA income exclusions under a new § 5.609(b)(10).

Additionally, HOTMA provides an exclusion for payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance, and this proposed rule would include this exclusion.

Specific solicitation of comment 11: HUD is soliciting feedback about whether there are other income exclusions that should be provided for in this rulemaking. For example, deferred

disability benefits are excluded from income under HOTMA and this proposed rule, but the rule could provide for exclusions from income for all veteran's disability benefits.

8. Adjusted Income

Section 102(c) of HOTMA makes changes to "adjusted income" that require revisions to 24 CFR 5.611. Section 5.611 currently provides for a mandatory deduction of \$480 for each dependent. HOTMA provides for a mandatory deduction of \$480 for minors, students, and persons with disabilities who are not the head of the household or that person's spouse, and provides that this figure be adjusted annually for inflation and the actual deduction should be determined for each year by rounding such amount to the next lowest multiple of \$25. HOTMA also provides HUD the discretion to establish deductions in addition to those listed in HOTMA. As a result, HUD proposes to maintain the \$480 deduction for each dependent, which amount will be annually adjusted for inflation. In line with HOTMA's requirement, this rule would also increase the deduction for any elderly or disabled family from the current \$400 to \$525, which amount will be annually adjusted for inflation and rounded to the next lowest multiple of \$25.

This proposed rule would maintain other deductions currently allowed, such as those for child care and health and medical expenses. However, to conform to section 102(c) of HOTMA, this proposed rule would revise the deduction for health and medical expenses. Currently, this deduction is for the sum of (i) unreimbursed medical expenses of any elderly family, and (ii) the unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family to be employed. The deduction is currently limited to the amount by which these total expenses exceed three percent of the family's income. HOTMA increases the health and medical expense threshold from three percent to 10 percent. In other words, the health and medical

expense deduction is now limited to the amount by which those expenses exceed 10 percent of the family's annual income. This means families who receive a health and medical expense deduction at the time the HOTMA change is implemented may see a significant increase in their non-deductible health and medical expenses, which could result in an increase in their adjusted income and their rent. However, HUD notes that the reduction in the family's health and medical expense deduction may be offset to some degree by the HOTMA change that increases the deduction for elderly and disabled families from \$400 to \$525.

Section 102(c) provides that the Secretary shall by regulation provide hardship exemptions to the requirements of the health and medical expenses provision for impacted families who demonstrate an inability to pay calculated rents because of financial hardship, and that the regulations must include a requirement to notify tenants of any changes to determination of adjusted income based on the determination of the family's claim of financial hardship. In order to implement this provision, this proposed rule would provide, that if the family can demonstrate an inability to pay the new rent and the PHA or owner determines that the family's inability is the result of the change in the medical expense deduction (i.e., the increase in the amount of non-deductible expenses from 3 to 10 percent of family income), the PHA or owner would be required to recalculate the family's adjusted income. In recalculating the family's adjusted income, the PHA or owner would deduct the amount of eligible health and medical expenses that exceeds 6.5 percent of the family's annual income instead of the normally applicable 10 percent of family's annual income. HUD proposes a 6.5 percent threshold because it is half-way between the pre-HOTMA health and medical expense threshold of three percent and the new statutory 10 percent threshold. Under this proposed rule, the family's hardship exemption would expire at the family's next regular income reexamination or at such time that

the PHA or owner determines the family can pay their rent under the normal adjusted income calculation, whichever comes first. The PHA or owner would be required to notify the family in writing of the change in the determination of adjusted income, the family's rent resulting from the hardship exemption, and when the hardship exemption will expire. The intent of the proposed regulation is to allow families receiving hardship exemptions to transition to their new adjusted income and higher rent incrementally, rather than immediately absorbing the full increase as a result of the medical expense deduction change.

Section 102(c) also allows a hardship exemption for the child care expense deduction, which provides that any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education is deducted from annual income. Under this proposed rule, a hardship exemption would be provided to allow the deduction for reasonable child care costs to continue in certain circumstances for a family that no longer has a member that is employed or seeking to further his or her education. In order to qualify for the hardship exemption, the family would be required to demonstrate to the satisfaction of the PHA or owner that their inability to pay the increased rent is due to the loss of the child care deduction. In addition, the family would also have to demonstrate why the child care expense remains necessary now that no family member is employed, actively seeking employment, or furthering his or her education. For example, the family member may have had to temporarily suspend their educational pursuits as the result of injury or illness, and due to the injury or illness they are unable to be the primary full-time care giver for the child whose child care expenses were deducted from the family's adjusted income. Under this proposed rule, if the PHA or owner determines that the family qualifies for the hardship exemption, the PHA or owner would be required to recalculate the family's adjusted income and continue to include the deduction for the

reasonable child care expenses. As is the case with the health and medical expense hardship exemption, the child care expense hardship exemption would be temporary and would end no later than the family's next regular reexamination. The child care hardship exemption would also end at any point in time that the PHA or owner determines that the family is either able to pay the rent without the child care expense deduction or the need for the child care expense no longer exists.

The PHA or owner would be required to notify the family in writing of the change in the determination of adjusted income and the family's rent for both the adjusted medical expense deduction and the continuation of the child care deduction hardship exemptions. The notice would also inform the family of the temporary nature of the hardship exemption and that the exemption will expire at the earlier of the family's next regular income reexamination or at such time the PHA or owner determines the need for the hardship exemption no longer exists.

Specific solicitation of comment 12: HUD is soliciting feedback from affected parties on the proposed implementation of the hardship exemption for both the health and medical expenses deduction and child care deduction. Specifically, HUD is soliciting comments on whether there are better approaches to implementing the hardship exemptions than what is proposed in this rule, whether HUD should establish specific requirements or parameters as to how the PHA or owner would determine that the family is unable to pay the rent (for example, the percentage of the family's income paid for rent and health and medical expenses exceeds a certain percentage), or whether PHAs and owners should be given broad administrative discretion to establish their own policies on how to make this determination.

HUD's current regulations provide that for public housing, PHAs may adopt additional deductions from annual income. Under HOTMA, PHAs may also choose to adopt additional

deductions from income for the voucher programs, and the Section 8 project-based rental assistance program (where the PHA is an owner) in addition to public housing. As such, this proposed rule would provide that for public housing and the voucher programs, and where the PHA is an owner in the Section 8 project-based rental assistance program, PHAs may adopt additional deductions from annual income. Additionally, HOTMA requires that HUD establish procedures to ensure that any deductions adopted by PHAs do not materially increase Federal expenditures. Under this proposed rule, PHAs that adopt permissive deductions would not be eligible to receive any program funding to cover the increased cost to the impacted program. The rule provides that the PHA would have to identify the amount of subsidy provided on behalf of the family that is attributable to the permissive deduction as required by HUD. This information would then be used by HUD to ensure that the cost of the permissive deduction is not included in the subsidy for the public housing program, renewal funding for the HCV (including PBV) program, or the housing assistance payments provided to the PHA under the Section 8 project-based programs.

Specific solicitation of comment 13: HUD is soliciting feedback on whether the proposed implementation of permissive deductions (i.e., that a PHA will not be eligible for additional subsidy to cover the costs associated with the deduction) has any unintended consequences, or whether HUD should define “material” differently. Further, HUD is soliciting feedback on whether the permissive deductions could be used to provide incentives for employment. For example, HUD could permit PHAs to be eligible for additional subsidy for certain permissive deductions of earned income (e.g., permissive deductions of the first \$1,000 or \$5,000 of earned income) or other work-related income.

C. HOTMA Section 103

This proposed rule would create a new 24 CFR 960.507 in HUD's regulations to implement section 103 of HOTMA. Section 103 of HOTMA places an income limitation on a public housing tenancy for families at 120 percent of the AMI. However, HUD can adjust the over-income limit if HUD determines that it is necessary due to prevailing levels of construction costs or unusually high or low family incomes, vacancy rates, or rental costs. This proposed rule would provide that the over-income limit is determined by using the very low-income (VLI) level for the applicable area as the baseline and multiplying it by 2.4. Pursuant to section 3(a)(5) of the 1937 Act, the over-income limit does not apply in instances where a PHA operating fewer than 250 public housing units has admitted families with income exceeding the over-income limit, if the PHA is renting to those families because there are no income-eligible families on the PHA's waiting list or applying for public housing assistance. To conform to HOTMA, this proposed rule would also remove existing 24 CFR 960.261 from HUD's regulations, which provides that PHAs may not evict or terminate the tenancy of a family that is over the income limit for public housing if the family is participating in the Family Self-Sufficiency program, or if it currently receives the earned income disallowance.

Following section 16(a)(5) of the 1937 Act, this proposed rule would provide in § 960.507 that when a PHA becomes aware, through an annual reexamination or an interim reexamination of an increase in income, that if a family's income exceeds the over-income limit, the PHA must document that the family exceeds the threshold. This would be used to compare the family's current income with the family's income one year later. Once found to be over-income, the family's income would be reviewed one year later even if they have chosen to pay the flat rent. This proposed rule would also revise § 960.253(f) to conform to the new requirements of section 103 by providing that for families that choose to pay a flat rent, once a

family is determined to be over-income, the PHA must follow the documentation and reexaminations requirements in § 960.507(c).

Under proposed § 960.507, if the family's income continues to exceed the new over-income limit one year after the initial determination by the PHA, the PHA must, as required by section 16(a)(5) of the 1937 Act, provide written notification to the family that their income has exceeded the over-income limit for one year. If the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family would be subject to either a higher rent or termination based on the PHA's policies. If, however, a PHA discovers through an annual or interim reexamination that a previously over-income family has income that is now below the over-income limit, the family would no longer be subject to these provisions. The family would be entitled to a new two-year grace period if the family's income once again exceeds the over-income limit.

As reflected in this proposed rule, HOTMA requires that after a family's income has exceeded the over-income limit for two consecutive years, a PHA must terminate the family's tenancy within 6 months after the expiration of the two-year period or charge the family a monthly rent equal to the greater of: (1) the applicable Fair Market Rent (FMR); or (2) the amount of monthly subsidy for the unit including amounts from the operating and capital fund, as determined by regulations. To calculate the monthly subsidy for a unit, HUD would define the monthly amount of Public Housing Capital and Operating funds as the per unit subsidy amount provided to a PHA for the development in which the family resides for the most recent year for which HUD has calculated final eligibility. HUD would publish such funding amounts annually. PHAs would continue to charge these families the non-over-income rent amount (the family's

choice of income-based or flat rent) for the time period during the 6-month period before termination.

HUD notes that PHAs are required to establish policies for continued occupancy in public housing. Through the development of those policies, a PHA is able to consider specific circumstances in which they would provide for flexibility in the administration of over-income requirements, provided such policies are in compliance with the 1937 Act and all applicable fair housing requirements. PHAs are subject to, among other fair housing and civil rights authorities, Section 504 of the Rehabilitation Act (Section 504), the Fair Housing Act, and Title II of the Americans with Disabilities Act (ADA), which include, among other requirements, the obligation to grant reasonable accommodations that may be necessary for persons with disabilities.

HOTMA requires PHAs to submit an annual report that specifies the number of families in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing. Because the report data must reflect the numbers at the end of the calendar year, not at the end of a PHA's reporting year, and because not all PHAs submit an annual plan, this report will be a separate report from other reporting requirements. However, HUD is developing a tool that will make it simple for PHAs to submit the relevant numbers and make those numbers public.

D. HOTMA Section 104

Section 104 of HOTMA establishes a limitation on the amount and type of assets that a family assisted under the public housing or Section 8 programs can possess. To conform to HOTMA, this proposed rule would create a new section 24 CFR 5.618 to HUD regulations that would restrict assistance to families based on assets.

1. Assets restriction

The new § 5.618 would provide that families would be ineligible for assistance under HUD's public housing or Section 8 programs if their net family assets exceed \$100,000. HOTMA requires that this amount be adjusted annually for inflation and, as discussed earlier in this preamble HUD solicits comment on the inflationary index that should be used.

2. Real Property

To conform to HOTMA, § 5.618 would also provide that families could not receive assistance if they have a present ownership interest in, legal right to reside in, and the effective legal authority to sell real property in the jurisdiction in which the property is located that is suitable for occupancy by the family as a residence. Under this proposed rule, families would have to demonstrate that in the jurisdiction in which the property is located they do not have a present ownership interest in, legal right to reside in, or the legal authority to sell the real property for the property to be excluded from net family assets. HUD proposes to exclude from the real property restriction any property that is jointly owned by a member of the family and another individual or individuals who would not reside with the family. HUD proposes this exclusion because an assisted family may not have the effective legal authority to sell such property in the jurisdiction in which the property is located, and depending on the nature of the property or type of joint ownership, may not be able to live in the property.

Specific solicitation of comment 14: HUD is soliciting comment about the circumstances under which a family may not have a present ownership interest in, legal right to reside in, or effective legal authority to sell real property in the jurisdiction in which the property is located, and the feasibility of families demonstrating this.

While HOTMA does not define what it means for a property to be suitable for occupancy, this proposed rule would provide that a property is suitable for occupancy unless that family can demonstrate that the property: (i) does not meet the disability-related needs of the family, including meeting physical accessibility requirements; (ii) is not sufficient for the size of the family, for example, there are not enough bedrooms; (iii) that it is geographically located so as to provide a hardship for the family; and (iv) that it is not safe to reside in because of its physical condition.

HOTMA provides certain exclusions to the real property restriction. Particularly, this restriction would not apply to the following: (i) a manufactured home for which the family is receiving Section 8 tenant-based assistance; (ii) property for which a family receives homeownership assistance from a PHA; (iii) any person who is a victim of domestic violence; or (iv) to any family that is offering the property for sale. Under this proposed rule, in order to demonstrate that a family is offering property for sale, a PHA or owner could require that the family provide evidence that the property has been listed for sale. This proposed rule would add that the restriction in this section also does not apply to victims of dating violence, sexual assault, or stalking, and that the terms “domestic violence,” “dating violence,” “sexual assault,” and “stalking” are defined in HUD’s regulations implementing the Violence Against Women Act (VAWA).

Specific solicitation of comment 15: HUD is soliciting feedback from the public on how the exemption for victims of domestic violence, dating violence, sexual assault, or stalking will be implemented and how it will operate.

To provide context for the references to real property in § 5.618, this proposed rule would provide a new definition in 24 CFR 5.100 for “real property,” specifying that “real property” has the same meaning as that provided under the state law in which the real property is located.

3. Self-Certification of Assets

In accordance with HOTMA, § 5.618 would also provide that the PHA or owner could determine the net assets of a family based on a certification by the family that their net family assets do not exceed \$50,000 after annual adjustment for inflation. This proposed rule would also revise § 5.659 of the current regulations to reflect the requirement that families can self-certify. Similarly, § 5.618 would provide that the PHA or owner could determine that a family does not have any present ownership interest in any real property based on a certification by the family to that effect.

4. Discretion on Enforcing the Asset Limitation

This proposed rule would conform to HOTMA by providing that PHAs and owners have the discretion to choose not to enforce the limitation on eligibility based on assets, or may establish exceptions to the restrictions based on eligibility criteria, if the PHA or owner does so in the PHA plan or under a policy adopted by the owner.

In HOTMA and these regulations, eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. This proposed rule clarifies that these policies cannot violate fair housing statutes or regulations. This means that these policies cannot be implemented in a manner that discriminates against any protected classes.

HOTMA provides that PHAs and owners who choose to enforce the asset limitations may delay for a period of not more than 6 months the eviction or termination of a family that does not meet the limitation on assets. This proposed rule would clarify that it is the start of the eviction or termination proceedings that could not be delayed for more than 6 months.

5. Net Family Assets

This proposed rule would revise the definition of “net family assets” found in 24 CFR 5.603 to align it with the provisions in section 104 of HOTMA. The new regulatory definition would provide that the following will not be considered to be part of net family assets: (i) equity in a manufactured home where the family receives Section 8 tenant-based assistance; (ii) equity in property for which a family receives HCV homeownership assistance from a PHA; (iii) Family Self-Sufficiency Accounts; (iv) the value of any accounts specifically dedicated for retirement; (v) real property for which the family does not have the effective legal authority necessary to sell such property; (vi) amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty that resulted in a member of the family being disabled; and (vii) the value of any Coverdell education savings account or any qualified tuition program under section 529 of the IRC. HUD proposes to exclude from the definition of net family assets the value of any ABLE account created under section 529A of the IRC. Per section 104 of HOTMA, with respect to non-revocable trusts, the value of the trust would not be considered an asset to the family as long as the fund continues to be held in trust. Any income distribution from any trust would be considered income, except in the case of distributions from non-revocable trusts, made to cover the medical expenses for a minor. Additionally, this proposed rule would continue some of the current exclusions from net family assets, including interest in Indian trust land.

HOTMA provides that the term “net family assets” does not include the value of personal property, except for items of personal property of significant value, as the Secretary may establish. Therefore, this proposed rule would revise the existing exclusion in HUD’s regulations for the value of necessary items of personal property, to provide that the exclusion would apply to items of personal property with a total value under \$50,000, other than necessary items. HUD proposes to consider items valued over \$50,000 to be those of “significant value,” given HOTMA’s provision that families may certify that their net assets do not exceed \$50,000.

Specific solicitation of comment 16: HUD specifically seeks comment on the proposal to exclude items of personal property valued \$50,000 or less, other than necessary items, from the calculation of net family assets, and comments on what such necessary items of personal property might be. Examples might include a car that the family relies on for transportation, or medical equipment.

This proposed rule would make additional changes to the definition of net family assets for clarity. It would eliminate the current exclusion from net family assets for equity accounts in HUD homeownership programs, as this terminology is vague and unclear. As mentioned above, the new definition for net family assets would exclude equity in a manufactured home where the family receives Section 8 tenant-based assistance and equity in property for which a family receives homeownership assistance from a PHA.

6. Authorization for Financial Disclosures

Section 104 of HOTMA that states that HUD must require PHAs to require all applicants and recipients under the 1937 Act to authorize the PHA to obtain financial information needed in connection with a determination with respect to eligibility. Currently, 24 CFR 5.230 requires HUD assistance applicants and participants to sign a consent form that authorizes PHAs and

owners to obtain information from certain sources in order to verify income. Further, 24 CFR 5.232 outlines that a refusal to sign the consent form would lead to termination. Following HOTMA's mandate, this proposed rule would amend § 5.230 to include a provision authorizing PHAs to obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (42 U.S.C. 1304), whenever the PHA determines the record is needed in connection with a determination of an assistance applicant's or participant's eligibility or level of benefits. Additionally, this section currently states the consent form must contain a statement that the authorization to release the information requested by the consent form expires 15 months after the date the consent form is signed. HOTMA section 104 requires that the authorization allowing PHAs to obtain financial records from financial institutions shall remain effective until the earliest of: the rendering of a final adverse decision for an assistance applicant; the cessation of a participant's eligibility for assistance from HUD and the PHA; or the express revocation by the assistance applicant or recipient (or applicable family member) of the authorization, in a written notification to HUD. In an effort to streamline program administration, this proposed rule would revise the section to align the current authorization consent timeline to the HOTMA timeline, thereby reducing annual burden on PHAs.

HOTMA provides PHAs with the discretion to determine whether applicants or recipients are ineligible for benefits if they, or their family members, refuse to provide or revoke the authorization to obtain financial records. Therefore, this proposed rule would also revise 24 CFR 5.232, which describes the penalties for failing to sign the consent form required in § 5.230, to clarify that the penalties in § 5.232 will not apply if applicants or participants or their family members revoke their consent for the PHA to access financial records, unless the PHA has

established a policy in their annual plan that revocation of consent to access financial records will result in denial or termination of assistance or admission.

E. CPD Program Changes

As discussed earlier in this preamble, this proposed rule would make changes to regulations for HUD's HOME, HTF, and HOPWA programs in order to better align regulations pertaining to income and assets among different HUD programs. The HOME and HTF programs are federal block grant programs that provide annual grants to States and local governments to create decent, safe and affordable housing for low-income, very low-income, and extremely low-income families, including homeless individuals. In fiscal year 2018, HUD allocated over \$1.6 billion to the States and localities nationwide to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. The HOME and HTF programs often operate in conjunction with other federal, state or local housing programs and leverage community and private equity in support of affordable housing. To make housing affordable, HOME and HTF funds are frequently combined with other HUD federal programs such as Project-Based Section 8 Rental Assistance and used as gap financing in rental housing developed with Low-Income Housing Tax Credits (LIHTC). Many of these programs require the use of the Part 5 definition of annual income and adjusted income for the purpose of determining income eligibility and/or tenant payments.

1. HOPWA

Section 859 of the AIDS Housing Opportunity Act (42 U.S.C. 12908) requires that HOPWA rental assistance "be provided to the extent practicable in the manner" of the Section 8 program. Therefore, HUD is proposing to incorporate into the HOPWA regulations in 24 CFR

part 574 the procedures on income examinations and net family assets proposed for the public housing, HCV, and Section 8 project-based rental assistance programs in this rule.

To determine the resident payment, as in the Section 8 program, annual reexaminations of family income will be the standard under the proposed rule. However, if a family has income from fixed-income sources, grantees will be able to apply a COLA to those sources of income and will only perform a full reexamination of income every three years. If a family has at least 90 percent of their income from fixed-income sources, the grantees will be able to apply a COLA to the entire income amount, provided the family certifies that their income is at least 90 percent fixed-income, and the grantee will only have to conduct a full reexamination of family income every three years.

In between full reexaminations, this proposed rule would provide that families receiving HOPWA assistance may request an interim reexamination of family income at any time, but grantees are only required to conduct the reexamination if the family's adjusted income, as defined in the revised 24 CFR 5.611, changes by an amount that the grantee estimates will result in a change of at least 10 percent in annual adjusted income. HUD anticipates that this will decrease the number of reexaminations that HOPWA grantees conduct.

The proposed rule further amends the HOPWA regulations to cross reference § 5.611 more generally and eliminate the reference to the earned income disregard. These changes, which impact calculation of the resident rent payment under HOPWA, similarly impact HUD's Section 8 programs because of HOTMA.

Additionally, this proposed rule would revise part 574 to apply the part 5 definition of net family assets to HOTMA that applies to the Section 8 program, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other

homeownership assistance eligible under the HOPWA program would be excluded from the definition. This proposed rule would also revise part 574 to incorporate HOTMA's provisions for restrictions on assistance to families with certain assets to the HOPWA program, but would specify that the requirements in 24 CFR § 5.618 do not apply to short-term mortgage and utility assistance and other homeownership assistance eligible under the HOPWA program, or to housing information services or supportive services funded under HOPWA.

2. HOME

The proposed rule at 24 CFR 92.203(b) would incorporate HUD's proposed revisions to the definition of income at 24 CFR 5.609(a) and (b), which is the definition of income established by HOTMA, as well as revisions to the definition of Net Family Assets at 24 CFR 5.603 used to determine the imputed income on assets over \$50,000 based on the current passbook saving rate. In determining annual income, a participating jurisdiction would continue to exclude income and asset enhancements derived from HOME assistance pursuant to 24 CFR 92.203(d)(1) (e.g., the rental income generated from HOME assistance provided to a multi-unit housing project where the owner occupies one of the units and rents out the other units acquired through the HOME assistance), and the value of a homeowner's principal residence pursuant to 24 CFR 92.203(b)(1) from the calculation of Net Family Assets, as defined in 24 CFR 5.603.

This proposed rule would revise 24 CFR 92.203(c) to move the first sentence into a new standalone paragraph (e) and incorporate the second and third sentences into paragraphs (e)(1) and (e)(2). The new paragraph (e) would incorporate the revisions to the definition of adjusted income at 24 CFR 5.611(a)-(c). It would require participating jurisdictions, when determining a family's adjusted income for the purpose of determining the appropriate amount of rent applicable to a tenant in HOME units receiving Federal or State project-based subsidy, the to

apply the mandatory deductions from income established at 24 CFR 5.611(a). For units with tenant-based rental assistance, § 92.203(e)(2) would permit a participating jurisdiction to apply the deductions at § 5.611(a) and grant financial hardship exemptions according to the requirements of § 5.611(c).

Finally, where a family applying for or living in a HOME-assisted unit receives assistance from the HCV program or where a PHA is the owner in the PBRA program, HUD proposes to add § 92.203(e)(3) to require the use of the deductions in § 5.611(a) and (b) to calculate a family's adjusted income. In such cases, HUD would allow a participating jurisdiction to accept a PHA's determination to grant a hardship exemption under § 5.611(c).

Specific solicitation of comment 17: HUD is seeking feedback from interested parties on whether HUD should adopt all revisions made to adjusted income (mandatory deductions, additional deduction and hardship exemptions, as applicable) when combining HOME and other federal programs such as Section 8 in a rental project.

Specific solicitation of comment 18: HUD is seeking feedback from interested parties on whether HUD should adopt financial hardship exemptions for families receiving HOME-funded tenant-based rental assistance.

For purposes of calculating tenant income in the HOME program, HUD is not proposing to adopt the new section 5.609(c) for determining income at initial occupancy or interim reexaminations and the timing requirements of those determinations. The HOME regulations permit participating jurisdictions to choose, on a program (e.g., homeownership) basis and on a rental project by project basis, one of two definitions of annual income: 1) annual income as defined at 24 CFR 5.609; or 2) the Internal Revenue Service definition of "adjusted gross income." For families who are tenants in HOME-assisted housing and not receiving tenant-based

rental assistance, the HOME program requires a participating jurisdiction to examine at least 2 months of source documents evidencing annual income at initial occupancy. For subsequent income determinations during the HOME compliance period, the existing HOME regulations permit a participating jurisdiction to use one of three methods to determine annual income. Adopting 24 CFR 5.609(c) for the HOME program would impose different methods for calculating and verifying income that are more stringent than those currently required by the HOME regulations. HUD believes the methods described at 24 CFR 92.203(a)(1) provide a participating jurisdiction more flexibility in administering and managing its HOME-assisted rental housing portfolio.

Specific solicitation of comment 19: In light of revisions made to 24 CFR 5.609(c)(3) to allow PHAs to accept a timely income determination of a family from another agency's means-tested Federal public assistance, HUD is seeking feedback from interested parties on whether 24 CFR 92.203(a)(1)(iii) should specify what HUD considers timely for purposes of accepting an income determination of a family made by an administrator of a government program under which the family receives benefits.

There is no independent statutory basis in the HOME program for applying the EID in 24 CFR 5.617 to persons with disabilities who are tenants in HOME-assisted rental housing or who are receiving tenant-based rental assistance. HUD applied 24 CFR 5.617 to HOME through 24 CFR 92.203(d)(3) to be consistent with other programs governed by the 1937 Act. With the revision to the 1937 Act removing the authority for disallowance of earned income and the sunset of the corresponding regulatory provision in 24 CFR 5.617(e), the HOME regulation at 24 CFR 92.203(d)(3) would be revised so that the applicability to HOME will also sunset.

The HOME statute does not establish a limitation on the amount of and type of assets that a family assisted with HOME funds can have. HUD is not proposing to adopt the new asset restriction for the HOME program.

Specific solicitation of comment 20: HUD is seeking feedback from interested parties on whether HUD should adopt asset restrictions for any housing programs funded with HOME (e.g., homebuyer, rental, tenant-based rental assistance and owner-occupied rehabilitation), as well as when housing programs funded with HOME are combined with other federal programs such as Section 8.

3. HTF

The proposed rule at 24 CFR 93.151(b) incorporates HUD's proposed revisions to the definition of annual income at 24 CFR 5.609(a) and (b), which is the definition of income provided by HOTMA, as well as the revisions to the definition of Net Family Assets at 24 CFR 5.603 that are used to determine the imputed income on assets over \$50,000 based on the current passbook saving rate.

For purposes of calculating tenant income in the HTF program, HUD is not proposing to adopt the new section 5.609(c) for determining income at initial occupancy or interim reexaminations and the timing requirements for those determinations. For families who are tenants in HTF-assisted housing, the HTF program requires a grantee to examine at least 2 months of source documents evidencing annual income at initial occupancy. For subsequent income determinations during the HTF compliance period, a grantee may use one of three methods to determine annual income. Adopting 24 CFR 5.609(c) for the HTF program would impose methods for calculating and verifying income that are more stringent than those currently required by the HTF regulations without providing additional benefit to the program. As HTF

does not provide an ongoing subsidy to grantees, HUD believes the methods described at 24 CFR 93.151(d) provide a grantee more flexibility in administering and managing its HTF-assisted rental housing portfolio.

Specific solicitation of comment 21: In light of revisions made to 24 CFR 5.609(c)(3) to allow PHAs to accept a timely income determination of a family from another agency's means-tested Federal public assistance, HUD is seeking feedback from interested parties on whether 24 CFR 93.151(d) should specify what HUD considers timely for purposes of accepting an income determination of a family made by an administrator of a government program under which the family receives benefits.

This proposed rule would revise 24 CFR 93.151(b) to clarify that annual income includes income from all persons in the household regardless of which definition of annual income the grantee applies to its HTF-assisted program(s) or project(s). Furthermore, this proposed rule would revise 24 CFR 93.151 to add a new paragraph (e) to incorporate revisions to adjusted income in § 5.611 and requires grantees to apply the deductions in § 5.611(a) to determine the tenant's adjusted income. For public housing, the HCV program, and where the PHA is an owner in the PBRA program, paragraph (e)(2) requires the use of the deductions in § 5.611(a) and (b) to determine the tenant's adjusted income and also permits a grantee to accept a PHA's decision to grant financial hardship exemptions under § 5.611(c) to a family.

The HTF statute did not establish a limitation on the amount of and type of assets that a family assisted with HTF funds may have. HUD is not proposing to adopt the new asset restriction for the HTF program.

Specific solicitation of comment 22: HUD is seeking feedback from interested parties on whether HUD should adopt asset restrictions for any housing programs funded with HTF funds

(e.g., homebuyer or rental housing), as well as when HTF funds are combined with other federal programs such as Section 8.

III. Findings and Certifications.

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”

The rule would update HUD regulations for various programs to conform to sections 102, 103, and 104 of HOTMA by listing specific criteria for triggering family income reviews, providing methods for calculating family income, revising the definition of income and adjusted income, setting a limit on the amount and type of assets that assisted families may have, revising the definition of net family assets, and requiring that applicants for and recipients of assistance provide authorization to PHAs to obtain financial records. This proposed rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the order). HUD has prepared an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule. HUD’s RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street, SW, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review

the docket file 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 Relay Service at toll-free 800-877-8339.

Executive Order 13771

Executive Order 13771, entitled “Reducing Regulation and Controlling Regulatory Costs,” was issued on January 30, 2017. This proposed rule is expected to be an EO 13771 deregulatory action. HUD estimates that this rule would have annual net cost savings in the first year of about \$2 million and after the first year, of about \$23 million to \$27 million, accruing to Public Housing Agencies, HOPWA grantees, and Project-Based Rental Assistance owners. Around 20,000 to 30,000 units may transfer from currently assisted households to households on the waitlist or new applicants. Further details on the estimated cost savings of this proposed rule can be found in the rule’s RIA.

Regulatory Flexibility Act

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 proposed rule revises HUD regulations in certain ways that will reduce burden or provide flexibility for PHAs and owners and other housing providers. The proposed rule provides specific events that trigger an interim reexamination of family income, whereas current regulations provide that families may request reexaminations at any time. The proposed rule provides methods for calculating family income, but also provides a safe harbor for PHAs and owners who determine a family’s income based on other means-tested Federal public assistance

programs. Additionally, this proposed rule provides for a limitation on assets, but provides that PHAs and owners may choose not to enforce this provision. This proposed rule also provides that applicants and recipients of assistance must provide authorization for PHAs to obtain financial records in order to verify family income.

For the reasons presented, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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 rule would not have Federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

The proposed rule relates to establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance and related external administrative or fiscal requirements and procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act

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 2502-0204, 2506-0133, and 2577-0083. HUD expects to make changes to these existing recordkeeping items consistent with the changes in this proposed rule and believes that the changes will result in a decrease of burden of \$8,337,744 and 345,495 hours.

HUD would change the HOPWA PRA OMB No. 2506-0133 to reduce the recordkeeping burden hours from 60 hours to 50 hours per grantee to reflect the change to a triennial recertification and the reduction in the frequency of granting interim reexaminations. See § 574.310(e).

Information Collection	Number of Responses	Annual #	Annual Burden		Hourly Cost	Annual Cost	
			Current	New		Current	New
OMB No. 2502-0133							
Recordkeeping for Competitive, Renewal, and Formula Grantees	227	1	60.00	50.00	\$23.85	\$324,837	\$270,698
Total	-	-	Savings	2,270	-	Savings	\$54,139

HUD would change the Section 8 project-based PRA OMB No-2502-0204 to reflect the regulatory change that a new consent to release of information would only apply at the time of

initial tenancy, estimated at an approximate 80 percent reduction based on anticipated number of new participants, and reduce the number of certification compliances conducted by project owners to represent the decrease in interim reexaminations, estimated at 5 percent of recertifications. See §§ 5.230 and 5.657.

Information Collection	Number of Responses		Annual #	Hours per response	Annual Burden		Hourly Cost	Annual Cost	
	Current	New			Current	New		Current	New
OMB No. 2502-0204									
Certification Compliance	1,597,764	1,517,876	1	.6333	1,011,864	961,271	\$25.00	\$25,296,600	\$24,031,771
Consent for Release	1,597,764	302,022	1	.1667	266,347	50,347	\$25.00	\$6,658,675	\$1,258,675
Total	-	-	-	-	Savings	266,593	-	Savings	\$6,664,829

HUD would also change the Public Housing and HCV programs PRA OMB No. 2577-0083. HUD provides for a new burden in the Public Housing context for providing notices to over-income tenants and reporting the number of families on the waiting list annually, and the change includes a reduction in burden for Public Housing and HCV to reflect the decrease in interim reexaminations, estimated at 5 percent of recertifications. HUD would also change the Public Housing and HCV programs PRA OMB No. 2501-0014 to reflect the regulatory change that a new consent to release information would only apply at the time of initial tenancy, estimated at an approximate 88 percent reduction based on anticipated number of new participants. See §§ 5.230, 960.257, 960.507 and 982.516.

Information Collection	Number of Responses		Annual #	Hours per response	Annual Burden		Hourly Cost	Annual Cost	
OMB No.	Current	New			Current	New		Current	New
Recertification (OMB No.2577-0083)	2,398,462	2,278,539	1	.333	798,688	758,753	\$17.50	\$13,977,040	\$13,278,178
Over-Income Tenant Notification	-	2,000	1	.1667	-	333	\$17.50	-	\$5,828
Public Housing Waiting List Data		2,929	1	4		11,716	\$17.50		\$205,030
Consent for Release (OMB No, 2501-0014)	3,765,676 ²	421,693	1	.1667	627,738	70,296	\$30.00	\$18,832,140	\$2,108,880
Total	-	-	-	-	Savings	585,328	-	Savings	\$17,225,264

HUD believes that there are no PRA burden reductions for HOME and the HTF programs. Also, HUD finds that while changes to § 5.609, Annual Income, and § 5.611, Adjusted Income, will result in tenants providing different information, the net burden will not change. 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.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

² This number is based on the PIH Information Center (PIC) database and the Tenant Rental Assistance Certification System (TRACS) database.

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however.

Comments must refer to the proposed rule by name and docket number (FR-6057) and must be sent to:

HUD Desk Officer
Office of Management and Budget
New Executive Office Building
Washington, DC 20503
Fax number: 202-395-6947

and

Colette Pollard
HUD Reports Liaison Officer
Department of Housing and Urban Development,
451 7th Street, SW, Room 2204,
Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://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 them immediately available to the public. Comments submitted electronically through the <http://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.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.239, 14.241, 14.275, 14.850, 14.856, and 14.871.

List of Subjects in

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, Wages

24 CFR Part 92

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

24 CFR Part 93

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

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 982

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

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR Parts 5, 92, 93, 574, 960, 966, and 982 as follows:

PART 5- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109-115, 119 Stat. 2936; Sec. 607, Pub. L. 109-162, 119 Stat. 3051 (42 U.S.C. 14043e et seq.); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273..

2. In § 5.100, add in alphabetical order the definitions for “earned income” and “real property” to read as follows:

§ 5.100 Definitions.

* * * * *

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, or any cash or in-kind benefits.

* * * * *

Real property as used in this part, has the same meaning as that provided under the state law in which the real property is located.

* * * * *

3. In § 5.210, revise the second sentence in paragraph (a) and the first sentence in paragraph (b)(2) to read as follows:

§ 5.210 Purpose, applicability, and Federal preemption.

(a) * * * This subpart B also enables HUD and PHAs to obtain income information about applicants and participants in the covered programs through computer matches with State Wage Information Collection Agencies (SWICAs) and Federal agencies, and from financial institutions and employers, in order to verify an applicant's or participant's eligibility for or level of assistance. * * *

(b) * * *

(2) The information covered by consent forms described in this subpart involves income information from SWICAs and wages, income and resource information from financial institutions, net earnings from self-employment, payments of retirement income, and unearned income as referenced at 26 U.S.C. 6103. * * *

* * * * *

4. In § 5.230, revise paragraph (c)(4), and add paragraph (c)(5) to read as follows:

§ 5.230 Consent by assistance applicants and participants.

* * * * *

(c) * * *

(4) A provision authorizing PHAs to obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (42 U.S.C. 1304), whenever the PHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits; and

(5) A statement that the authorization to release the information requested by the consent form shall remain effective until the earliest of:

(i) The rendering of a final adverse decision for an assistance applicant;

(ii) The cessation of a participant's eligibility for assistance from HUD and the PHA; or

(iii) The express revocation by the assistance applicant or recipient (or applicable family member) of the authorization, in a written notification to HUD.

5. In § 5.232, add paragraph (c) to read as follows:

§ 5.232 Penalties for failing to sign consent form.

* * * * *

(c) This section does not apply if the applicant or participant, or any member of the assistance applicant's or participant's family revokes his/her consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy in the PHA's Annual Plan that revocation of consent to access financial records will result in denial or termination of assistance or admission.

6. In § 5.601:

a. Amend paragraph (d) by removing the phrases "HOME Investment Partnerships Program (24 CFR part 92);" and "Housing Opportunities for Persons with AIDS (24 CFR part 574); Shelter Plus Care Program (24 CFR part 582); Supportive Housing Program (McKinney Act Homeless Assistance (24 CFR part 583);", and

b. Revise paragraph (e) to read as follows:

§ 5.601 Purpose and applicability.

* * * * *

(e) Limitations on eligibility for assistance based on assets, as provided in § 5.618, in the Section 8 (tenant-based and project-based) and public housing programs.

7. In § 5.603, add in alphabetical order definitions for "Distribution from a trust", "Foster adults", and "Minor", and revise the definitions for "net family assets" and "responsible entity" to read as follows:

§ 5.603 Definitions.

* * * * *

(b) * * *

Distribution from a trust. Any cash payout to the beneficiary or any payment to a third-party on behalf of the beneficiary

* * * * *

Foster adults. Persons with disabilities, not related to the family, who are unable to live alone.

* * * * *

Minor. A member of the family, other than the head of family or spouse, who is less than 18 years of age.

* * * * *

Net family assets. (1) Net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of investment.

(2) 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.

(3) Excluded from the calculation of net family assets are:

(i) Interests in Indian trust land;

(ii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982;

(iii) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982.

(iv) Family Self-Sufficiency Accounts;

(v) Necessary items of personal property, and all items of personal property valued at \$50,000 or less;

(vi) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals;

(vii) Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located;

(viii) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family being disabled; and

(ix) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, and the value of any ABLE account authorized under Section 529A of such code.

(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 in the calculation of net family assets, so long as the fund continues to be held in trust.

* * * * *

Responsible entity. For § 5.611, in addition to the definition of “responsible entity” in § 5.100, “responsible entity” means:

- (1) For the Rent Supplement Payments Program, the owner of the multifamily project;
- (2) For the Rental Assistance Payments Program, the owner of the Section 236 project;
- (3) For the Section 202 Supportive Housing Program for the Elderly, the “Owner” as defined in 24 CFR 891.205;
- (4) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities), the “Borrower” as defined in 24 CFR 891.505; and
- (5) For the Section 811 Supportive Housing Program for Persons with Disabilities, the “owner” as defined in 24 CFR 891.305.

* * * * *

8. Revise § 5.609 to read as follows:

§ 5.609 Annual income.

(a) Annual income means, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is less than 18 years of age, and

(2) The imputed return on assets over \$50,000 based on the current passbook savings rate, as determined by HUD, if the actual income on assets over \$50,000 cannot be computed. The \$50,000 figure in this paragraph shall be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD.

(b) Annual income does not include the following:

(1) Any imputed return on assets of \$50,000 or less, which figure shall be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD;

(2) Distribution from a non-revocable trust fund specifically provided to cover the cost of medical expenses for a minor;

(3) Income from employment of children (including foster children) under the age of 18 years and foster adults;

(4) Payments received for the care of foster children or foster adults, or state kinship or guardianship care payments;

(5) Insurance payments and settlement for personal or property losses;

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

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family being disabled;

(8) Income of a live-in aide, as defined in § 5.403;

(9) The full amount of student financial assistance paid directly to the student or to the educational institution on the student's behalf, except this does not apply for students applying for or receiving section 8 assistance pursuant to § 5.612 who are not over the age of 23 with dependent children. Financial assistance is any grant-in-aid, scholarship or other assistance amounts an individual receives for the cost of tuition, books, room and board, and fees charged to the student by the education institution. For students applying for or receiving section 8 assistance who are not over the age of 23 with dependent children, the financial assistance in

excess of the cost of tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002), shall be considered income;

(10) Amounts from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, any qualified tuition program under section 529 of such Code, and any amounts from ABLE accounts under section 529A of such Code;

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

(12) (i) 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);

(ii) 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;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount 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;

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or 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;

(13) 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;

(14) Earned income of dependent full-time students, except that the earned income up to the amount of the deduction for a dependent in § 5.611 of each dependent student shall be considered income;

(15) Adoption assistance payments in excess of \$480 per adopted child, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD;

(16) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts;

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance;

(18) 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;

(19) Payments provided by a State Medicaid managed care system to a family to keep a member who has a disability living at home;

(20) Loan proceeds (the net amount disbursed by a lender to a borrower, under the terms of a loan agreement) received by the family (e.g., proceeds received by the family to finance the purchase a car);

(21) Payments received by Indian persons as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code;

(22) Amounts that HUD is required by Federal statute to exclude 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 paragraph (b) of this section 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; or

(23) Replacement housing “gap” payments made in accordance with 49 CFR part 24 to a displaced person that moves from a federally subsidized housing unit and occupies another federally subsidized housing unit when such payments offset the increased out of pocket cost to the displaced person for rent and utilities because of the displacement. Such replacement housing “gap” payments are not excluded from annual income, however, to the extent that the increased cost of rent and utilities is subsequently reduced or eliminated and the displaced person retains or continues to receive the replacement housing “gap” payments.

(c) *Calculation of Income.* The PHA or owner shall calculate family income as follows:

(1) *Initial occupancy or assistance and interim reexaminations.* The PHA or owner shall estimate the income of the family for the upcoming 12-month period:

(i) To determine family income for initial occupancy or for the initial provision of housing assistance; or

(ii) To determine family income for an interim reexamination of family income under § 5.657(c), 24 CFR 960.257(b), or 24 CFR 982.516(c).

(2) *Annual Reviews.* (i) The PHA or owner shall determine the income of the family for the previous 12-month period and use this figure as the family income for annual reviews, except where the PHA or owner uses a streamlined income determination under § 5.657(d), 24 CFR 960.257(c), or 24 CFR 982.516(b).

(ii) In determining the income of the family for the previous 12-month period, the PHA or owner shall take into consideration any redetermination of income during the previous 12-month period resulting from an interim reexamination of family income under § 5.657(c), 24 CFR 960.257(b), or 24 CFR 982.516(c).

(iii) The PHA or owner must make adjustments to reflect current income if there was a change in income during the previous 12-month period that was not accounted for in a redetermination of income.

(3) The PHA or owner may determine the family's income prior to the application of any deductions applied in accordance with § 5.611 based on timely income determinations made within the previous 12-month period for purposes of the following means-tested Federal public assistance:

(i) The Temporary Assistance for Needy Families block grant (42 U.S.C. 601, et seq.).

(ii) Medicaid assistance (42 U.S.C. 1396 et seq.).

(iii) The Supplemental Nutrition Assistance Program (7 U.S.C. 2011 et seq.).

(iv) The Earned Income Tax Credit (26 U.S.C. 32).

(v) Other forms of Federal public assistance determined by the Secretary to have comparable reliability and announced through Federal Register notice.

(4) The PHA or owner will not be considered out of compliance with the requirements in this paragraph (c) solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA or owner determination of family income varies from the correct income determination by no more than 5 percent. The PHA or owner must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

9. Revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined under §5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* (1) \$480 for each dependent, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, rounded to the next lowest multiple of \$25;

(2) \$525 for any elderly family or disabled family, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, rounded to the next lowest multiple of \$25;

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

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

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

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

(b) *Additional deductions.* (1) For public housing, the Housing Choice Voucher (HCV) program, and where the PHA is the owner in the Section 8 project-based programs, a PHA may adopt additional deductions from annual income. A PHA that adopts such deductions will not be eligible for an increase in subsidy for the public housing program, renewal funding for the HCV program, or housing assistance payments under the Section 8 project-based programs to cover the cost of the additional deductions. The PHA must establish a written policy for such deductions. The PHA must report to HUD the increased subsidy cost resulting from the additional deduction.

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

(c) *Financial hardship exemption for unreimbursed medical expense and child care expense deductions.* (1) *Exemption for unreimbursed medical expense deduction.* A family may request a financial hardship exemption due to the change in the unreimbursed medical expense deduction under paragraph (a)(3) of this section, under which the amount of unreimbursed expenses that are not deductible has been increased from 3 to 10 percent of annual income. The

family must demonstrate to the responsible entity's satisfaction an inability to pay their rent as a result of this change. If the hardship exemption is approved, the responsible entity must recalculate the family's adjusted income, and under paragraph (a)(3) of this section deduct the sum of the eligible expenses that exceeds 6.5 percent of annual income instead of 10 percent of annual income. The hardship exemption and the resulting alternative calculation for the unreimbursed medical expenses deduction will end at the family's next regular examination or such time that the responsible entity determines the family can now pay the rent without the hardship exemption, whichever comes first.

(2) *Exemption to continue child care expense deduction.* A family may request a financial hardship exemption to continue the child care expense deduction under paragraph (a)(4) of this section. The responsible entity must recalculate the family's adjusted income and continue the child care deduction if the family demonstrates to the responsible entity's satisfaction that the family is unable to pay their rent because of loss of the child care expense deduction and the child care expense is still necessary even though the family member is no longer employed or furthering his or her education. The hardship exemption allowing the child care expense deduction to continue ends at the earliest of:

- (i) The family's next regular reexamination;
- (ii) Such time the responsible entity determines the need no longer exists for the childcare expense if no adult family member is employed or furthering their education no longer exists; or
- (iii) Such time the responsible entity determines that family is able to pay their rent without the hardship exemption.

(3) *Responsible entity determination of family's inability to pay the rent.* The responsible entity must establish a policy on how it defines and determines the family's inability to pay the rent for purposes of determining eligibility for a hardship exemption under this paragraph (c).

(4) *Family notification.* The responsible entity must notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from the hardship exemption. The notice must also inform the family that the hardship exemption will expire at the family's next regular income reexamination or at such time the responsibility entity determines the exemption is no longer necessary in accordance with paragraph (c)(1) or (c)(2) of this section.

10. Amend § 5.617 by adding paragraph (e) to read as follows:

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

* * * * *

(e) Effective [EFFECTIVE DATE OF FINAL RULE], this section will not apply to any family who is not eligible for and participating in the disallowance of earned income under this section on [EFFECTIVE DATE OF FINAL RULE].

§ 5.617 [Removed]

11. Remove § 5.617.

12. Add § 5.618 to subpart F to read as follows:

§ 5.618 Restriction on assistance to families based on assets.

(a) *Restrictions based on net assets and property ownership.* (1) A dwelling unit may not be rented, and assistance may not be provided, either initially or upon reexamination of family income, to any family if:

(i) The net family assets (as defined in § 5.603) exceed \$100,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD; or

(ii) The family has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, in the jurisdiction in which the property is located, real property that is suitable for occupancy by the family as a residence, except this restriction does not apply to:

(A) Any property for which the family is receiving assistance under 24 CFR 982.620; or under the Homeownership Option in 24 CFR part 982;

(B) Any property that is jointly owned by a member of the family and another individual or individuals who would not reside with the family;

(C) Any person that is a victim of domestic violence, dating violence, sexual assault, or stalking, as defined in this part 5 (subpart L); or

(D) Any family that is offering such property for sale.

(2) A property will be considered “suitable for occupancy” under paragraph (a)(1)(ii) of this section unless the family demonstrates that it:

(i) Does not meet the disability-related needs for all members of the family, including physical accessibility requirements;

(ii) Is not sufficient for the size of the family;

(iii) Is geographically located so as to provide a hardship for the family; or

(iv) Is not safe to reside in because of the physical condition of the property.

(b) *Self-certification.* (1) A PHA or owner may determine the net assets of a family based on a certification by the family that the net family assets (as defined in § 5.603) do not exceed \$50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, 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.

(2) A PHA or owner may determine compliance with paragraph (a)(1)(ii) of this section based on a certification by a family that certifies that such family does not have any present ownership interest in any real property at the time of the income determination or review.

(c) *Enforcement.* (1) When recertifying the income of a family that is subject to the restrictions in paragraph (a) of this section, a PHA or owner may choose not to enforce such restrictions, or alternatively, may establish exceptions to the restrictions based on eligibility criteria.

(2) The PHA or owner may only choose not to enforce the restrictions in paragraph (a) of this section or establish exceptions to such restrictions pursuant to a policy set forth in the public housing agency plan or under a policy adopted by the owner.

(3) Eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. Such policies must be in conformance with all applicable fair housing statutes and regulations, as discussed in this part 5.

(d) *Eviction delays.* The PHA or owner may delay for a period of not more than 6 months the initiation of eviction or termination proceedings of a family based on noncompliance under this provision.

(e) *Applicability.* This section applies to the Section 8 (tenant-based and project-based) and public housing programs.

13. In § 5.657, revise paragraph (c) and add paragraph (e) to read as follows:

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

* * * * *

(c) *Interim reexaminations.* (1) A family may request an interim reexamination of family income. The owner must make the interim reexamination within a reasonable time after the family request.

(2) The owner may decline to process a family request for an interim reexamination if the owner estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the owner. If the owner determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the owner) the owner must make the interim reexamination within a reasonable time after the family's request.

(3) The owner must conduct a reexamination of family income within a reasonable time after the owner becomes aware that the family's adjusted income (as defined in § 5.611) has

changed by an amount that the owner estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(i) The owner may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(2) of this section during the year;

(ii) The owner may choose not to conduct an interim reexamination in the last three months of a certification period; and

(iii) The owner will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the owner determination of family income varies from the correct income determination by no more than 5 percent. The owner must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(4) The owner must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

* * * * *

(e) Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 USC 3544) and any applicable privacy rules in subpart B of this part.

14. In § 5.659, revise paragraph (e) to read as follows:

§ 5.659 Family information and verification.

* * * * *

(e) *Verification of assets.* For a family with net family assets (as the term is defined in § 5.603) equal to or less than \$50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, an owner may accept, for purposes of recertification of income, a family's declaration under § 5.618(b), except that the owner must obtain third-party verification of all family assets every 3 years.

* * * * *

PART 92 —HOME INVESTMENT PARTNERSHIPS PROGRAM

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

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

16. In § 92.203, add subject headings to paragraphs (a) and (b), revise paragraphs (b)(1), and (c), add a heading to paragraph (d), revise paragraph (d)(1), and add paragraph (e) to read as follows:

§ 92.203 Income determinations.

(a) *Methods of determining income.* * * *

(b) *Defining income for eligibility.* * * *

(1) Annual income as defined at 24 CFR 5.609 (a) and (b) (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR 5.603); or

* * * * *

(c) *Using Income Definitions.* The participating jurisdiction may use only one definition of annual income for each HOME-assisted program (e.g., downpayment assistance program) that it administers and for each rental housing project.

(d) *Projecting Income.* (1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income includes income from all persons in the household. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

* * * * *

(e) *Determining Adjusted Income.* Although the participating jurisdiction may use either of the definitions of “annual income” permitted in paragraph (b) of this section to calculate annual income, it must then apply deductions from income in 24 CFR 5.611(a) to determine the family’s adjusted income.

(1) The participating jurisdiction must use a family’s adjusted income when determining tenant contribution in units receiving Federal or State project-based rental subsidy pursuant to § 92.252(b).

(2) The participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family in accordance with § 92.209(h) and may grant financial hardship exemptions to a family receiving tenant-based rental assistance in accordance with § 5.611(c) of this title.

(3) When a family applying for or living in a HOME-assisted rental unit receives section 8 housing choice voucher assistance, or when a public housing agency owns the HOME-assisted rental unit in the project-based Section 8 programs, the participating jurisdiction must apply the

income deductions in 24 CFR 5.611(a) and (b) to determine the family’s adjusted income and may accept a public housing agency’s determination to grant financial hardship exemptions to the family under 24 CFR 5.611(c).

§ 92.203 [Amended]

17. Amend § 92.203 by removing paragraph (d)(3).

PART 93 —HOUSING TRUST FUND

18. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

19. In § 93.151, revise paragraph (b)(1)(i) and add paragraphs (b)(3) and (e) to read as follows:

§ 93.151 Income determinations.

* * * * *

(b) * * *

(1) * * *

(i) “Annual income” as defined at 24 CFR 5.609(a) and (b); or

* * * * *

(3) Annual income includes income from all persons in the household.

* * * * *

(e) *Adjusted Income.* (1) Although the grantee may use either of the definitions of “annual income” permitted in paragraph (b) of this section to calculate annual income, the

grantee must then apply deductions established in 24 CFR 5.611(a) to determine the tenant's adjusted income.

(2) For public housing, the housing choice voucher program, and where the public housing agency is the owner in the Section 8 project-based programs, a grantee must apply the public housing agency income deductions at 24 CFR 5.611(a) and (b) to determine the family's adjusted income and may accept a public housing agency's determination to grant financial hardship exemptions pursuant to 24 CFR 5.611(c).

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

21. In § 574.310, revise paragraph (d)(1); redesignate paragraph (e) as paragraph (g), and add new paragraphs (e) and (f) to read as follows:

§ 574.310 General Standards for eligible housing activities.

* * * * *

(d) * * *

(1) 30 percent of the family's monthly adjusted income (calculated under 24 CFR 5.611);

* * * * *

(e) *Reexamination of family income.* (1) *Annual reexaminations.* For purposes of determining resident rent payments, grantees will conduct a reexamination and redetermination of family income every year.

(2) *Interim reexaminations.* (i) A family may request an interim reexamination of family income at any time. The grantee must make the interim reexamination within a reasonable period of time after the family's request.

(ii) Grantees may decline to process a family request for an interim reexamination if the grantee estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the grantee. If the grantee determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the grantee) the grantee must make the interim reexamination within a reasonable time after the family's request.

(iii) Grantees must conduct the reexamination of family income within a reasonable time after the grantee becomes aware that the family's adjusted income (as defined in § 5.611 of this title) has changed by an amount that the grantee estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(A) The grantee may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased unless the family has previously received an interim reduction under paragraph (e)(2)(ii) of this section during the year;

(B) The grantee may choose not to conduct an interim reexamination in the last three months of a certification period; and

(C) The grantee will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the grantee becomes aware of the errors. A de minimis error is an error where the grantee's determination of family income varies from the correct income determination by no

more than 5 percent. The grantee must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(iv) The grantee must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

(3) *Streamlined income determinations.* (i) A grantee may elect to apply a streamlined income determination to families receiving fixed income as described in paragraph (e)(3)(iii) of this section.

(ii) *Definition of fixed income.* For purposes of this section, fixed income means periodic payments at reasonably predictable levels from one or more of the following sources:

(A) Social Security, Supplemental Security Income, Supplemental Disability Insurance.

(B) Federal, state, local, or private pension plans.

(C) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.

(D) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(iii) *Method of streamlined income determination.* Grantees using the streamlined income determination must adjust a family's income according to the percentage of a family's unadjusted income that is from fixed income.

(A) When 90 percent or more of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA or COLAs to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed income and that their sources of fixed income have not changed from

the previous year. For non-fixed income, grantees may choose to make adjustments pursuant to paragraph (e)(1) of this section.

(B) When less than 90 percent of a family's unadjusted income consists of fixed income, grantees using streamlined income determinations must apply a COLA to each of the family's sources of fixed income. Grantees must determine all other income pursuant to paragraph (e)(1) of this section.

(iv) *COLA rate applied by grantees.* Grantees using streamlined income determinations must adjust a family's fixed income using a COLA or current interest rate that applies to each specific source of fixed income and is available from a public source or through tenant-provided, third-party-generated documentation. If no public verification or tenant-provided documentation is available, then the grantee must obtain third-party verification of the income amounts in order to calculate the change in income for the source.

(v) *Triennial verification.* For any income determined pursuant to a streamlined income determination, a grantee must obtain third-party verification of all income amounts every 3 years.

(f) *Net family assets and restriction on assistance to families based on assets.* (1) The definition of net family assets in § 5.603 of this title applies to this part, except the value of a home of a participant receiving short-term mortgage or utility assistance under § 574.300(b)(6) or other homeownership assistance eligible under the HOPWA program is excluded from the definition.

(2) The requirements in § 5.618(a) through (d) of this title on providing assistance to families who have certain assets apply to HOPWA assistance provided under this part, except that § 5.618 of this title does not apply to the provision of short-term mortgage or utility

assistance under § 574.300(b)(6) or other homeownership assistance eligible under the HOPWA program, housing information services, as described in § 574.300(b)(1), or supportive services, as described in § 574.300(b)(7).

* * * * *

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

22. 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).

23. In § 960.102, revise the definition of “Over-income family” in paragraph (b) to read as follows:

§ 960.102 Definitions.

* * * * *

(b) * * *

Over-income family. A family whose income exceeds the local over-income limit. See subpart E of this part.

* * * * *

24. In § 960.253, revise paragraph (f)(1) to read as follows:

§ 960.253 Choice of rent.

* * * * *

(f) * * *

(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, except for families that are found to be over-income. Once a family is determined to be over-income, the PHA must follow the documentation and reexamination requirements under § 960.507(c).

25. Amend § 960.255. by adding paragraph (e) to read as follows:

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

* * * * *

(e) Effective **[EFFECTIVE DATE OF FINAL RULE]**, this section will not apply to any family who is not eligible for and participating in the disallowance of earned income under this section on **[EFFECTIVE DATE OF FINAL RULE]**.

§ 960.255 [Removed]

26. Remove § 960.255.

27. In § 960.257, revise paragraph (b), and add paragraph (e) to read as follows:

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

* * * * *

(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 conduct the interim reexamination within a reasonable period of time after the family request.

(2) The PHA may decline to process a family request for an interim income reexamination if the PHA estimates the family's adjusted income will decrease by an amount

that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the PHA. If the PHA determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the PHA), the PHA must conduct the interim income reexamination within a reasonable period of time after the family's request.

(3) The PHA must conduct a reexamination of family income within a reasonable time after the PHA becomes aware that the family's adjusted income (as defined in 24 CFR 5.611) has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (b)(2) of this section during the year;

(ii) The PHA may choose not to conduct an interim reexamination in the last three months of a certification period; and

(iii) The PHA will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income varies from the correct income determination by no more than 5 percent. The PHA must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(4) The PHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

* * * * *

(e) Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 USC 3544).

28. In § 960.259, revise paragraph (c)(2) to read as follows:

§ 960.259 Family information and verification.

* * * * *

(c) * * *

(2) For a family with net family assets (as the term is defined in 24 CFR 5.603) equal to or less than \$50,000, which amount will be adjusted annually in accordance with a commonly recognized inflationary index, as determined by HUD, a PHA may accept, for purposes of recertification of income, a family's declaration under 24 CFR 5.618(b), except that the PHA must obtain third-party verification of all family assets every 3 years.

§ 960.261 [Removed]

29. Remove § 960.261.

30. Add § 960.507 to Subpart E read as follows:

§ 960.507 Families exceeding the income limit.

(a) *In general.* Families residing in public housing may not, except as provided in § 960.503, have incomes that exceed the local over-income limit.

(b) *Determination of over-income limit.* The local over-income limit is determined by multiplying the applicable income limit for a very low-income family as defined in 24 CFR 5.603(b), by a factor of 2.4.

(c) *Documenting over-income families.* (1) When a PHA becomes aware, through an annual reexamination, or an interim reexamination for an increase in income, that a family's income exceeds the applicable over-income limit, the PHA must document that the family exceeds the threshold.

(2) If, a year after the documentation in paragraph (c)(1) of this section, the PHA determines that the family still has an income exceeding the over-income limit, the PHA must provide written notification to the family that their income has exceeded the over-income limit for one year, and that if the family's income continues to exceed the over-income limit for the next 12 consecutive months, the family will be subject to either a higher rent payment or termination, based on the PHA's policies under paragraph (d).

(3) If a PHA discovers that a previously over-income family has income that is now below the over-income limit, the family is no longer subject to these provisions. The family is entitled to a new 2-year grace period if the family's income once again exceeds the over-income limit.

(d) *End of grace period.* Once a family has exceeded the over-income limit for two consecutive years, the PHA must, as detailed in its Admissions and Continued Occupancy Policies (ACOP)—

(1) Charge the family a monthly rent equal to the greater of—

(i) The applicable fair market rent for the unit; or

(ii) The amount of the monthly subsidy provided for the unit, which will be determined by summing the per unit assistance provided to a public housing property as calculated through the applicable formulas for the Public Housing Capital Fund and Public Housing Operating Fund.

(A) For the Public Housing Capital Fund, the amount of Capital Funds provided to the unit will be calculated as the per unit Capital Fund assistance provided to a PHA for the development in which the family resides for the most recent funding year for which Capital Funds have been allocated;

(B) For the Public Housing Operating Fund, the amount of Operating Funds provided to the unit will be calculated as the per unit amount provided to the public housing project where the unit is located for the most recent funding year for which a final funding eligibility determination has been made;

(C) HUD will publish such funding amounts no later than December 31st each year; or

(2) Terminate the tenancy of the family no more than 6 months after the third determination that the family's income exceeds the income limit in paragraph (a) of this section. PHAs must continue to charge these families the non-over-income rent amount (the family's choice of income-based or flat rent) for the time period during the 6-month period before termination.

(e) *Reporting.* Each PHA must submit a report annually to HUD that specifies, as of the end of the year, the number of families residing in public housing with incomes exceeding the over-income limit and the number of families on the waiting lists for admission to public housing projects. These reports must also be publicly available.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

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

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

32. In § 966.4, revise paragraph (l)(2)(ii) to read as follows:

§ 966.4 Lease requirements.

* * * * *

(1) * * *

(2) * * *

(ii) Being over the income limit for the program, as provided in 24 CFR 960.507.

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

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

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

34. In § 982.516, revise paragraphs (a)(3), (c), and (d), and add paragraph (h) to read as follows:

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

(a) * * *

(3) For a family with net family assets (as the term is defined in 24 CFR 5.603) equal to or less than \$50,000, which amount will be adjusted annually in accordance with a commonly

recognized inflationary index, as determined by HUD, a PHA may accept, for purposes of recertification of income, a family's declaration under 24 CFR 5.618(b), except that the PHA must obtain third-party verification of all family assets every 3 years.

* * * * *

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

(2) The PHA may decline to process a family request for an interim income reexamination if the owner or PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's annual adjusted income, or if the family's adjusted income will decrease by a lower threshold amount that is less than 10 percent, if such lower threshold has been established by the PHA. If the PHA determines the estimated decrease in family adjusted income is at least 10 percent (or the lower alternative threshold established by the PHA), the PHA must conduct the interim income reexamination within a reasonable period of time after the family's request.

(3) The PHA must conduct a reexamination of family income within a reasonable time after the PHA becomes aware that the family's adjusted income (as defined in 24 CFR 5.611) has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in annual adjusted income, except:

(i) The PHA may not consider any increase in the earned income of the family when estimating whether the family's adjusted income has increased, unless the family has previously received an interim reduction under paragraph (c)(2) of this section during the year;

(ii) The PHA may choose not to conduct an interim reexamination in the last three months of a certification period; and

(iii) The PHA will not be considered out of compliance with the requirements in this paragraph solely due to de minimis errors in calculating family income but is still obligated to correct errors once the PHA becomes aware of the errors. A de minimis error is an error where the PHA determination of family income varies from the correct income determination by no more than 5 percent. The PHA must still take any corrective action necessary to repay a family if the family has been overcharged for their rent as a result of the de minimis error in the income determination.

(4) The PHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

(d) *Family reporting of change.* The PHA must adopt policies consistent with this section prescribing when and under what conditions the family must report a change in family income or composition.

* * * * *

(h) Reviews of family income under this section are subject to the provisions in Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 USC 3544).

Dated: August 13, 2019

Brian D. Montgomery
Acting Deputy Secretary

Billing Code 4210-67

[FR Doc. 2019-19774 Filed: 9/16/2019 8:45 am; Publication Date: 9/17/2019]